THE LAVV OF Charitable Uſes,

WHEREIN

The *Statute* of 43 *Eliz.* *Chap.* 4. is ſet forth and Explained; with Directions how to *Sue out* and *proſecute* Commiſſions grounded upon that *Statute*:

Alſo *Preſidents*, *Inquiſitions*, and *Decrees*, with divers *Judgments*, and *Reſolutions*, upon *Exceptions* and *Appeals* againſt *Decrees*; and other *Proceedings* upon the ſaid STATUTE.

The Second Edition, much enlarged and amended.

By JOHN HERNE.

LONDON:
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BIBLIOTHECA · BONNENSIS

To the Reader.

TO Commend the Piety of this *Statute* of *Charitable Uſes*, or to Lament the want of a thorough Explanation thereof, would afford abundant matter for a long *Preface*; But intending (as I ought) Charity without Oſtentation, I ſhall only inform the *Reader*, That having been often preſent at the Execution of *Commiſſions* grounded on this *Statute*, I have found the Gentlemen of the Countrey, *Commiſſioners*, *Jurors*, and parties proſecuting (by reaſon of the want of experience in *Clerks* attending ſuch *Commiſſioners*) forced to unneceſſary attendance and

charge: Whereupon grown almoſt weary of well-doing, being tyred out with often meetings, they never cheerfully embraced theſe *Commiſſions*: Nay, many *Inquiſitions* and *Decrees*, which have been returned, miſcarried, and were rendred ineffectual through the unskilfulneſs of thoſe that drew them: I therefore, to prevent ſuch inconveniences, did heretofore publiſh the ſame *Statute*, with ſeveral Obſervations thereupon. and divers Reſolutions and Judgments of *Lord Chancellors*, *Lord Keepers*, and *Judges* upon the ſame, and upon Exceptions and Appeals taken to and againſt ſeveral *Inquiſitions* and *Decrees* made by *Commiſsioners* on ſuch *Commiſſions*. I did alſo adde ſome good Forms of *Inquiſitions*, *Decrees*, and *Exceptions* to *Decrees*; that thoſe Gentlemen who were Authorized to execute ſuch *Commiſsions*, being made acquainted with the *Statute*, and underſtanding the power to them thereby given, might the better

ter discharge their duties therein. And that the *Clerks* attending such *Commissions*, might be furnished with *Presidents* of *Inquisitions* and *Decrees*, for the readier dispatch of the same. And having in the former Edition of this Book given good Light and Satisfaction to divers Persons touching the Intent of the said *Statute*, and the *Proceedings* thereupon. And that Edition being now sold, and no other Book of this nature being in Print, I have for the further advancement and carrying on of the works of Piety and Charity in that *Statute* mentioned, to their intended Ends, caused the same Book to be Reprinted, and have thereunto added many *Cases*, *Presidents*, *Marginal Notes*, *Observations*, and *Directions*, not in the said former Edition, and have disposed the same into a more orderly Method then before, with a *Table* directing to every Particular and Point in every *Case* and *President*, whereby any thing in the Book may be readily found

found out. My only aym herein being to eaſe the Country and Poor of unneceſſary Charge and Trouble, and to render the Proceedings upon ſuch *Commiſſions* effectual: And my hope is, that this Work will take that good Effect for which it is intended.

J. H.

THE

CHAP. I.

THE STATUTE Of Charitable Uſes.

43 Eliz. CHAP. 4.

An Act to redreſſe the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uſes.

WHereas Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, have been heretofore given, limited, appointed and aſſigned, as well by the Queens moſt excellent Majeſty, and her moſt noble Progenitors, as by ſundry other well diſpoſed perſons; ſome for relief of aged, impotent and poor people; ſome for maintenance of ſick

and maimed Soldiers and Mariners, Schools of Learning, Free Schools, and Scholars of Universities; some for repair of Bridges, Ports, Havens, Causways, Churches, Sea-bancks and High-ways; Some for Education and Preferment of Orphanes; some for, or towards the Relief, Stock, or Maintenance for houses of Correction; some for marriages of poor Maids; some for supportation, aid, and help of young Tradesmen, Handy-crafts-men, and persons decayed, and others for relief or redemption of Prisoners or Captives, and for aid or ease of any poor Inhabitants concerning payment of Fifteens, setting out of Soldiers and other Tares: which Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, Nevertheless, have not been imployed, according to the charitable intent of the Givers and Founders thereof, by reason of frauds, breaches of Trust, and negligence in those that should pay, deliver and imploy the same. For redress and remedy whereof; Be it enacted by Authority of this present Parliament, That it shall and may be lawful, to and for the Lord Chancellor, or Keeper of the great Seal of England for the time being. And for the Chancellor of the Dutchy of Lancaster for

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the time being, for Lands within the County Palatine of Lancaſter, from time to time, to award Commiſſions under the great Seal of England, or the Seal of the County Palatine, as the caſe ſhall require, into all, or any part or parts of this Realm reſpectively, according to their ſeverall Juriſdictions, as aforeſaid, to the Biſhops of every ſeveral Dioceſſe, and his Chancellor, in caſe there ſhall be any Biſhop of that Dioceſſe at the time of awarding of the ſame Commiſſions, and to other perſons of good and ſound behaviour, authorizing them thereby, or any four or more of them, to enquire as well by the Oaths of twelve men, or more of the County, as by all other good and lawfull ways and means, of all and ſingular ſuch Gifts, Limitations, Aſſignments and Appointments aforeſaid; and of all the abuſes, breaches of Truſt, negligences, miſ-imployments, not imploying, concealing, defrauding, miſconverting or miſgoverning of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods Chattels, Mony, or Stocks of Mony heretofore given, limited, appointed or aſſigned, or which hereafter ſhall be given, limited, appointed, or aſſigned, to, or for any the charitable and godly uſes before rehearſed, and after the ſaid Commiſſioners,

or any four, or more of them (upon calling the parties interessed in any such Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money and Stocks of Mony) shall make enquiry by the Oaths of twelve men or more of the said County (whereunto the persons interessed shall and may have and take their lawful challenge and challenges) and upon such enquiry, hearing, and examining thereof, set down such Orders, Judgments and Decrees as the said Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, or Stocks of mony, may be duly and faithfully implayed, to, and for such of the charitable uses and intents before rehearsed respectively for which they were given, limited, assigned or appointed by the Donors and Founders thereof, which Orders, Judgements and Decrees not being contrary or repugnant to the Orders, Statuts, or Decrees of the Donors or Founders, shall by the authority of this present Parliament stand firm and good, according to the Tenor and Purport thereof, and shall be executed accordingly, untill the same shall be undone and altered by the Lord Chancellor of England, or Lord Keeper of the great Seal of England, or the Chancellor of the County Palatine of

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Lancaſter reſpectively within their ſeveral Juriſdictions, upon complaint by any party grieved to be made to them.

Provided always, that neither this Act, nor any thing therein contained, ſhall in any wiſe extend to any Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money or Stocks of money, given, limited, aſſigned, or appointed, or which ſhall be given, limited, appointed or aſſigned to any Colledge, Hall, or houſe of Learning within the Univerſities of Oxford or Cambridge, or to the Colledges of Weſtminſter, Eaton, or Winchester, or any of them, or to any Cathedral or Collegiat Church within this Realm.

And Provided alſo, That neither this Act nor any thing therein ſhall extend to any City or Town corporate, or to any the Lands or Tenements given to the uſes aforeſaid, within any ſuch City or Town corporate, where there is a ſpecial Governor or Governors appointed to govern or direct ſuch Lands, Tenements, or things diſpoſed to any the uſes aforeſaid, neither to any Colledge Hoſpital or Free-ſcool, which have ſpecial Viſitors, or Governors, or Overſeers appointed them by their Founders.

Provided alſo, and be it enacted by the Authority aforeſaid, that neither this Act, nor

any thing therein contained shall be any way prejudicial or hurtfull to the jurisdiction of the Ordinary, or power of the Ordinary, but that he may lawfully in every cause execute and perform the same, as though this Act had never bëen had or made.

Provided also, and be it enacted, That no person or persons, that hath, or shall have any of the said Lands, Tenements, Rents, Annuities, Profits, Hereditaments, goods, Chattels, Money, or Stocks of Mony in his hands or possession, or doth, or shall pretend Title thereunto, shall be named a Commissioner or a Juror for any the causes aforesaid, or being named, shall execute or serve in the same.

And Provided also, That no person or persons which hath purchased or obtained, or shall purchase or obtain upon valuable consideration of Money or Land, any Estate in, or Interest, of, in, to, or out of any Lands, Tenements, Rents, Annuities, Hereditaments, Goods or Chattels that have bëen, or shall be given, limited or appointed to any of the charitable Uses above mentioned without fraud or covin (having no notice of the same charitable Uses) shall not be impeached by any Decrees or Orders of Commissioners above mentioned, for, or concerning the same his Estate or Interest; And yet nevertheless,

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be it enacted, that the ſaid Commiſſioners, or any four or more of them, ſhall and may make Decrées and Orders for recompence to be made by any perſon or perſons, who being put in truſt, or having notice of the charitable Uſes above mentioned, hath, or ſhall break the ſame truſt, or defraud the ſame Uſes by any conveyance, gift, grant, leaſe, demiſe, releaſe or converſion whatſoever, and againſt the Heirs, Executors and Adminiſtrators of him, them, or any of them, having aſſets in Law or equity, ſo far as the ſame aſſets will extend.

Provided always, that this Act ſhall not extend to give power or authority to any Commiſſioners before mentioned, to make any Orders, Judgments or Decrées, for, or concerning any Mannors, Lands, Tenements, or other Hereditaments aſſured, conveyed, granted, or come unto the Queens Majeſty, to the late King Hen. the 8. King Edw. the 6. or Q. Mary, by Act of Parliament, ſurrender, exchange, relinquiſhment, eſcheat, attainder, conveyance, or otherwiſe; And yet, nevertheleſſe, Be it enacted, That if any ſuch Mannors, Lands, Tenements, or Hereditaments, or any of them, or any Eſtate, Rent or Profit thereof, or out of the ſame, or any part thereof, have or hath bèen given, granted, limited, appointed or aſſigned, to, or for any the

charitable Uſes before expreſſed at any time ſince her Majeſties Reign, that then the ſaid Commiſſioners, or any four or more of them, ſhall and may, as concerning the ſame Lands, Tenements, Hereditaments, Eſtate, Rent or Profit, ſo given, limited, appointed, or aſſigned, proceed to enquire, and to make Orders, Judgments and Decrees according to the purport and meaning of this Act, as before is mentioned in the laſt ſaid mentioned Proviſo notwithſtanding.

And be it further enacted, that all Orders, Judgments and Decrees of the ſaid Commiſſioners, or of any four, or more of them, ſhall be certified under the ſeals of the ſaid Commiſſioners, or any four, or more of them, either into the Court of the Chancery of England, or into the Court of the Chancery within the County Palatine of Lancaſter, as the caſe ſhall require reſpectively, according to their ſeverall juriſdictions, within ſuch convenient time as ſhall be limited in the ſaid Commiſſion.

And that the ſaid Lord Chancellor, or Lord Keeper, and the ſaid Chancellor of the Dutchie, ſhall and may within their ſaid ſeverall juriſdictions, take ſuch order for the due execution of all or any of the ſaid Judgments, Orders, Decrees, as to either of them ſhall ſeem fit and convenient. And

And that if after any ſuch certificate or certificates made, any perſon or perſons ſhall find themſelves grieved with any of the ſaid Orders, Judgments, or Decrées, that then it ſhall and may be lawful to and for them, or any of them, to complain in that behalf unto the ſaid Lord Chancellor, or Lord Keeper, or to the Chancellor of the ſaid Dutchy of Lancaſter, according to their ſeveral Juriſdictions for redreſſe therein, and that upon ſuch complaint, the ſaid Lord Chancellor, or Lord Keeper, or the ſaid Chancellor of the Dutchy may, according to their ſaid ſeveral juriſdictions, by ſuch courſe as to their wiſdome ſhall ſeem meeteſt, the circumſtances of the caſe conſidered, proceed to the examination, hearing and determining thereof; and upon hearing thereof, ſhall and may annull, diminiſh, alter, or enlarge the ſaid Orders, Judgments and Decrées of the ſaid Commiſſioners, or any four, or more of them, as to either of them in their ſaid ſeveral juriſdictions ſhall be thought to ſtand with equity and good conſcience, according to the true intent and meaning of the Donors and Founders thereof, and ſhall and may tax and award good coſts of ſuit by their diſcretions againſt ſuch perſons as they ſhall finde to complain unto them without juſt and ſufficient

ficient cauſe of the Orders, Judgments, and Decrees before mentioned.

The Heads of the Statute of Charitable Uſes.

BY this Statute, Authority is given to the Lord Chancellor, or Lord Keeper, and to the Chancellor of the Dutchy, reſpectively, to Grant Commiſſions under their ſeverall Seals.

Concerning theſe Commiſſions, theſe ſix things are to be obſerved:

1. *The number; the Commiſſioners muſt be four, or more.*

2. *The Commiſſioners muſt be the Biſhop and Chancellor of the Dioceſſe, if there be a Biſhop, and other perſons of good and ſound behaviour.*

3. *In that Commiſſion, any four of them do ſuffice to make Orders and Decrees, for therein none is of the Quorum.*

4. *None ſhall be Commiſſioners that have any part of the Land, &c. or Goods or Chattels, Money or Stocks in queſtion.*

5. *The*

5. *The Commission is to limit a certain time within which the Commissioners are to order, decree, and certifie.*

6. *Their Authority is to enquire as well by the Oaths of twelve men or more, as by all other good wayes and means.*

Concerning the Jurors or Enquest of enquiry, these two things are to be observed:

1. *The parties interessed may have their lawfull challenge and challenges.*

2. *None that pretend Title to any of the Lands, &c. goods, chattels, money, or stocks in question, shall be a juror, &c.*

They are to enquire of all and singular gifts, limitations, and appointments of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, Stocks of money for 21 Charitable Uses, in relieving, maintaining, repairing, educating, preferring, marrying, supporting, aiding, helping, redressing, and easing.

1. *For relief of aged, and impotent, and poor people.*

2 *For maintenance of sick and maimed Souldiers.*

3 *Schools of Learning.*

4 *Free Schools.*

5 *Schol-*

5 *Schollars in Universities.*
6 *Houses of Correction.*
7 *For repair of Bridges.*
8 *Of Ports and Havens.*
9 *Of Causies.*
10 *Of Churches.*
11 *Of Sea-Banks.*
12 *And of High-Wayes.*
13 *For education and preferment of Orphans.*
14 *For marriage of poor Maids.*
15 *For supportation and help of young Tradesmen.*
16 *Of Handicraftsmen.*
17 *Of persons decayed.*
18 *For Redemption or Relief of Prisoners or Captives.*
19 *For ease and aide of poor Inhabitants concerning payment of Fifteens.*
20 *Setting out of Souldiers.*
21 *And other Taxes.*

And the Commissioners have power to enquire of these nine things:

1 *Of abuses.*
2 *Of breaches of trust.*
3 *Of negligences.*
4 *Of mis-employment.*
5 *Of not employing.*
6 *Of concealing.*
7 *Of defrauding.*
8 *Of misconverting.*
9 *Of misgovernment.*

of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, stocks of money given to any of the Charitable Uses aforesaid.

But this Act doth not extend to all Lands, &c. nor to all Goods and Chattels, money or ſtocks of money given to any Charitable uſe aforeſaid, but certain are exempted in theſe eight ſeveral Caſes, *viz.*

1 *Of the Colledges and Halls in either of the Univerſities of* Cambridge *and* Oxford.

2 *Of the Colledg of* Weſtminſter.

3 *Of the Colledg of* Eaton.

4 *Of the Colledg of* Wincheſter.

5 *Of any City or Town Corporate where there is a ſpeciall Governour or Governours of ſuch Lands.*

6 *Of any Colledg, Hoſpitall, or Free-School which have ſpeciall Viſitors or Governors, or Overſeers appointed to them by the Founders.*

7 *Of Purchaſors having theſe three qualities;*

1 *For valuable conſideration of Money or Land.*

2 *Without fraud or covin.*

3 *Having no notice of the ſame charitable uſe.*

But albeit the Commiſſioners cannot make a Decree againſt any ſuch purchaſors, yet may they make Decrees for recompence to be made

by

by any perſon or perſons who being put in truſt, or having notice of the charitable Uſes aboveſaid, have or ſhall break the ſaid truſt, or defraud the ſame Uſes by any conveyance, gift, grant, leaſe, releaſe or converſion, and againſt his or their Heirs, Executors, Adminiſtrators, having aſſetts in Law or Equity, ſo far as the ſame aſſets will extend.

8. *Of Purchaſors of Lands, Tenements, and Hereditaments aſſured, conveyed or come to Queen* Elizabeth, *Queen* Mary, Henry 8. *or* Edw. 6. *by Act of Parliament, ſurrender, exchange, relinquiſhmene, eſcheat, attornment, conveyance or otherwiſe; but if any ſuch Manors, Lands, &c. have ſince the beginning of Queen* Elizabeths *Reign been given, &c. to any of the charitable Uſes above expreſſed, then this Act doth extend to the ſame.*

Concerning the Certificate of the Commiſſioners, theſe four things are to be obſerved:

1. *That they certifie their Order and Decree reſpectively, either into the Court of Chancery of* England, *or into the Chancery of the County Palatine of* Lancaſter, *as the caſe ſhall require,*

2. *That it ought to be in Parchment, under the hands and ſeals of the Commiſſioners.*

3. *It*

3. *It muſt be within the time limited in the Commiſſion.*

4. *That the Lord Chancellor or Lord Keeper, and the ſaid Chancellor of the Dutchy ſhall and may within their ſeveral Juriſdictions, take ſuch order for the due execution of all or any of the ſaid Judgments, Decrees, and Orders ſo certified, as to either of them ſhall ſeem fit and convenient.*

In the Remedy for the parties grieved with ſuch Decrees ſo certified, theſe five things are to be conſidered:

1. *That he complain to the Lord Chancellor or Lord Keeper, or to the Chancellor of the Dutchy, according to their ſeverall Juriſdictions for redreſs thereof; And this Complaint is to be by Bill.*

2. *Upon ſuch complaint firſt they ſhall reſpectively, by ſuch courſe as to their Wiſdoms ſhall ſeem meeteſt, the circumſtances of the caſe conſidered, proceed to the hearing, examination, and determining thereof; and upon hearing thereof, ſhall or may adnull the whole, diminiſh part, or enlarge (that is, confirm the former, and enlarge the ſame by adding ſomething thereunto) the Judgments and Decrees ſo certified.*

3. *A*

3. *As shall be thought to stand with equity and good conscience.*

4 *According to the true intent and meaning of the Donors and Founders thereof: and this is* lapis ductilius, *whereby the Commissioners and Chancellors must steer their course.*

5 *And shall and may tax and award good costs of Suit by their discretion respectively, against such persons as shall complain to them respectively, without just and sufficient cause of the Orders, Judgments and Decrees before mentioned: But this Order being given and limited by an Act of Parliament, no costs (if the Order, Judgment, or Decree be annulled, diminished, or enlarged) ought to be given to the party complaining.*

CHAP.

CHAP. II.

CHARLES the Second, by the Grace, &c. To the Reverend Father in God the Lord Bishop of L. for the time being, and to our Right Trusty and Wellbeloved H. Lord H. of R: And also to our Trusty and Wellbeloved Sir T. W. Baronet, Sir G. P. Knight, Chancellor to the said B. for the time being, T. M. of M. W. M. of T. W. J. of T. T. H. E. J. C. H. of B. H. M. P. C. R. O. Esquires, Greeting: Know ye, That We for the due Execution of a certain Statute made in the High Court of Parliament, holden the seven and twentieth Day of October, in the three and fortieth Year of the late Queen Elizabeth, Entituled, An Act to Redresse the misimployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uses. And having special Trust and Confidence in your approved fidelities, wisdoms and Discretions, have authorized and appointed You to be Our Commissioners, and by these Presents do give unto You, and to any four, or more of you, full Power and Authority to inquire as well by the

Oaths of Twelve lawful men or more of our County of M. as well within Liberties as without, as by all other good and lawful ways and means, according to the purport and true meaning of the said Statute, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money, have at any time or times heretofore been given, limited, appointed or assigned by Us, or any of Our Progenitors or Predecessors, or by any other well-disposed Person or Persons, Bodies Pollitique or Corporate, for the relief of aged, impotent, and poor People, maintainance of sick and maimed Souldiers or Mariners, Schools of Learning, Free-Schools, or Schools in Universities, repair of Bridges, Ports, Havens, Causways, Churches, Sea-banks, or High-ways, Education or Preferrment of Orphanes, Relief, Stock, or Maintainance for houses of Correction, Marriages of poor Maids, Supportation aid or help of young Tradesmen, Handicrafts-men, or Persons decayed, Relief or Redemption of Prisoners or Captives, or aid or ease of any poor Inhabitants concerning payment of fifteens, setting out of Souldiers, or other Tares, mis-converting or mis-government of the same Lands, Tenements,

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ments, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money, or any of them heretofore given, limited, appointed or alligned, to, or for any the charitable and godly Uses before rehearsed, according to the purport and true meaning of the said Statute. And upon such Inquiry, Hearing, and Examining thereof, To set down such Orders, Judgments and Decrées, as the said Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money, may be duly and faithfully imployed, to, and for such of the charitable Uses and Intents before rehearsed respectively for which they were given, limited, alligned or appointed, by the Donors and Founders thereof, according to the purport and true meaning of the said Statute. And therefore We Command You, That at certain Dayes and Places, which you, or any four, or more of you shall appoint in this behalf, ye, or any four, or more of you, do make diligent Inquiry and Inquiries upon the Premisses, and all and singular the same, and all other things appointed by the said Statute for you or any four or more of you, to do and execute, that ye, or four of you at the least, perform, do, and execute, with effect, in all points, and in

every respect, according to the said Statute, and according to the true intent and meaning thereof. And the same Inquisition and Inquisitions, and every of them, together with all decrees, Judgments, Orders, and Proceedings, which you, or any four, or more of you shall, according to the said Statute, thereupon make or set down, That you, or four, or more of you, have before Us in Our Chancery with all convenient speed, or at the furthest in next coming, under the Hands and Seals of you, or any four or more of you, and the Hands and Seals of them, by whom the same Inquisition and Inquisitions shall be made, together with this Our Commission. And We also Command by Authority hereof, Our Sheriff of Our said County of M. that at such times, dayes, places as you, or any four or more of you shall appoint to him, he shall cause to come before you, or any four or more of you, such, and as many honest and lawful men of the said County (as well within Liberties as without), by whom the truth in the Premisses may best be known to enquire of the Premisses upon their Oaths, as you, or any four or more of you shall require and command him. Willing also, and charging and commanding all and singular Our Justices of

Peace,

Peace, Mayors, Sheriffs, Bayliffs, Constables, Head-Burroughs, & all other our Officers, Ministers, and Subjects to whom in this Case it shall or may appertain, to be aiding, helping, and assisting unto you, Our said Commissioners, or to any four or more of you, in the due Execution of this our Commission. As they and every of them tender Our Pleasure, and will answer the contrary at their uttermost perils: In witness.

Directions.

When a Commiſſion is firſt ſued out, it is good to give notice to the *Church-Wardens* and *Overſeers* for the Poor of Pariſhes, near where the Commiſſioners ſit, after this manner:

The 2d Day of *May*, 1610.

By the Commiſſioners for Charitable Uſes, *ſitting at* B. *in the County of* C.

Cambr. WHereas a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 10th Day of *January*, 1610. Hath been directed to divers perſons, dwelling and inhabiting within the County aforeſaid, authorizing them, or any 4. or more of them, to enquire by ſuch ways and means as in the ſaid Commiſſion is mentioned, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money,

Money, have been heretofore given by any well diſpoſed perſon or perſons, for relief of aged, impotent, and poor people, maintenance of ſick and maimed Souldier and Marriners, Schools of Learning, Free-Schools, and Schollars of Univerſities, repair of Bridges, Ports, Havens, Cawſways, Churches, Sea-Banks, and High-ways, for Education and Preferment of Orphans; for or towards the Relief, Stock, or Maintenance for Houſes of Correction, Marriage of poor Maids, ſupportation, aid, and help of young Tradeſmen, Handycrafts men, and perſons decayed, Releaſe and Redemption of Captives, Aid or Eaſe of any poor Inhabitants, concerning payment of Fifteens, ſetting out of Souldiers, and other Taxes, and of the Abuſes, Breaches of Truſt, negligences, miſ-employment, not imploying, concealing, defrauding, miſ-converting, and miſ-government of the ſame Lands, Tenements, Stocks of Money, and other things given to any of the Charitable Uſes aforeſaid; and to ſet down ſuch Orders, Judgments, and Decrees, as that the ſame Lands, Tenements, Money, and other things, may be duly imployed, to and for ſuch of the Charitable Uſes aforeſaid for which they were given, limited, or appointed, by the *Donors* and *Founders* thereof. It is this day Ordered by the ſaid Commiſſioners, that notice be given to all Pariſhes and places within the ſaid

County of *C.* of the Commiſſion aforeſaid, and the power thereby given to the ſaid Commiſſioners, that ſo all perſons that have occaſion may take the benefit of the ſaid Commiſſion, and have remedy and redreſs thereby, and withall, that Directions be given, that ſuch perſons as do come to the ſaid Commiſſioners, for Relief in the Premiſſes, do bring with them the *Wills*, *Evidences*, *Charters*, and *Writings*, whereby the *Charitable Uſes* do appear to be given, created, limited, aſſigned, and appointed, and ſufficient Witneſs to prove the Breaches of Truſt, not imploying, or miſ-imploying of ſuch things as ſhall be ſo abuſed, not imployed, or miſ-imployed, as aforeſaid.

By T. W. *Clerk, attending the ſaid Commiſſioners.*

CHAP. 3.

Proceedings upon the Statute of Charitable Uſes.

CHAP. III.

A Warrant to call the Parties intereſſed in the Goods or Lands miſ-imployed, to appear before the Commiſſioners.

Eſſex ſſ. WHereas by a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 21 Day of *July*, 1659. We whoſe Names are here underwritten, for the due execution of a certain Statute, made in the 43. year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money, heretofore given to Charitable Uſes*, are (among others) authorized and impowered to make ſuch enquiring, Orders, Judgments, and Decrees, touching the Premiſſes, as in the ſaid Statute and Commiſſion are mentioned. And whereas complaint hath been made unto

unto us by divers of the Inhabitants of *C.* in the County of *E.* That the Rents, Issues, and Profits of certain Messuages and Lands in great *Chesterford*, in the said County heretofore given and appointed by one *T. H.* deceased, for the aid of the Inhabitants of *C.* aforesaid, touching the payment of Fifteens, relief of the Poor, and maintenance of the High-ways, and other Charitable Uses, there have been mis-governed, misemployed, and misconverted by you, of which they desire that enquiry and redress may be made. Now, according to the Directions of the said Statute and Commission, we do hereby give you notice of the said Complaint, and also that we do intend to meet for the Execution of the said Statute and Commission, and to make enquiry of and touching the matters complained of as aforesaid, on the 20th day of *July*, at the house of *T. W.* in *G.* in the said County of *E.* at which time and place, we do desire you to be present to make your Defence therein, if you shall think it expedient. So fare you well,

Your loving Friends,

A. B.
C. D.
E. F.
G. H.

To

To the Sheriff of the County of E.

Eſſex. BY vertue of a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 6th day of *May* inſtant, to us (whoſe Names are here under wri.ten) and others directed, for the due execution of a Statute, made the 43. year of the Reign of the late Queen *Elizabeth*, entituled *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of Money*, heretofore given to Charitable Uſes: We do will and require you, That you cauſe to come before us, and others the ſaid Commiſſioners, or any 4. of us, at the houſe of *A.B.* called or known by the Name or Sign of the *Crown* in *B.* in the County aforeſaid, on the 10th. Day of *June* now next enſuing, by 9. of the clock in the morning of the ſame day, 24 honeſt and lawful men of your ſaid County, to enquire upon their Oaths, according to the tenour of the ſaid Commiſſion, what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Moneys, and Stocks of Money, have at any time heretofore been given, limited, appointed, or aſſigned, for any the Charitable Uſes, in the ſaid Statute and Commiſſion mentioned, and that have been miſ-imployed, miſ-converted, or miſ-governed;

governed; and of other the matters and things in the said Commission mentioned in that behalf; and hereof you are not to fail. Given under our Hands and Seals, the 22. day of *May*, in the year of our Lord, 1658.

When four or more of the Commissioners are met, then read the Commission.

Then call the Sheriff to return his Precept.

Then call the Jury.

When the Jury are full, then call the Parties Defendants, that they may take their Challenges to the Jury.

Then swear the Fore-man, as followeth:

The Oath to the Fore-man of the Jury.

YOu *shall diligently enquire what Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, have been heretofore given, limited, appointed, or assigned, as well by any King or Queen of* England, *as any other well-disposed person or persons, for relief of aged, impotent, and poor People, maintenance of Sick and maimed Souldiers, Mariners, Schools of Learning, Free-Schools, and Schollars of Universities, repair of Bridges, Ports, Havens, Cawsies, Churches, Sea-Banks, and Highways, Education and Preferment of Orphans, Mar-*

riage

riage of poor Maids ſupportation and help of young Tradeſmen, Handicrafts-men, and perſons decayed, redemption or relief of Priſoners and Captives, eaſe and aid of poor Inhabitants, concerning payment of Fifteens, ſetting out of Souldiers, and other Taxes; and of the abuſes breaches of truſt, negligences, miſ-imployment, not imploying concealing, defrauding, miſ-converting, and miſ-government of the ſame Lands, Tenements, Stocks of Money, and other things given to any the Charitable Uſes aforeſaid: And thereof you ſhall make a true Preſentment, according to your Evidence, and the beſt of your knowledge. So God help you.

It is convenient to have the *Inquiſition* ready drawn in Paper, eſpecially as to Wills and Deeds, and the breaches of Truſt, *&c.* and matters of Fact, that ſo the Jury having a Draught ready, may with eaſe amend, and make it ready to be engroſſed, and ſo ſave the Jury the trouble of another meeting.

CHAP. VI.

CHAP. IV.

Inquiſitions.

I.

Eſſex ſſ. AN Inquiſition indented, taken at *L.* in the County aforeſaid, the four and twentieth day of *M.* in the year of our Lord 1658. before *W. C. R.S.* &c. by vertue of a Commiſſion under the Great Seal of *England*, to them and others directed, for the due executing of a Statute made in the High Court of Parliament, holden the 27 day of *October*, in the three and fourtieth year of the Reign of the late Queen, intituled, *An Act to redreſſe the miſ-imployment of Lands, Goods, and Stocks of Money heretofore given to charitable Uſes.* By the Oaths of &c. honeſt and lawful men of the County aforeſaid, who being duly returned, impannelled and ſworn according to the ſaid Statute and Commiſſion, ſay upon their oath, That *M.G.* late of *W.* in the County of *E.* Widow deceaſed, long before her death, did hold to her and her Heirs of the then Lady of the Mannor of *W.* in the

the ſaid County of *E.* by Copy of Court-Roll according to the cuſtom of the ſaid Mannor, all that Meſſuage with the Appurtenances, ſcituate and lying at *P.* of the yearly value of, &c. above all charges and reprizes. And the Jurors aforeſaid do further ſay upon their oath, That the ſaid Tenement and Premiſſes were divers years in the life-time of the ſaid *M. G.* held and enjoyed by *D. B.* late of *S.* deceaſed, and that the ſaid *M. G.* did in her life-time, and long before her death, aſſign, limit, and appoint, That thirty ſhillings of the Rent of the ſaid Tenement and Premiſſes, ſhould be yearly imployed and beſtowed, in and for the relief of the poor people, for the time, and from time to time, being in *W.* aforeſaid, for ever, and that the ſum of thirty ſhillings *per annum* was yearly for divers years together in the life-time of the ſaid *M. G.* and by her direction, gift and appointment, paid to the Church-Wardens of the ſaid Pariſh for the relief of the Poor there. And the Jurors aforeſaid do further ſay upon their Oath, That the ſaid *M. G.* to the intent the ſaid yearly ſum of thirty ſhillings might be the better ſecured to be paid unto the Poor of the ſaid Pariſh of *W.* in her life-time (*to wit*) the, &c. did ſurrender the ſame Tenement and Premiſſes, according to the cuſtom of the ſaid Mannor, into the hands of the then Lady of the

the ſaid Mannor, to the uſe of ſuch perſon and perſons, and to the uſe and intent of the Teſtament or laſt Will of the ſaid *M. G.* as by the Copy of the Court-Roll of the ſame Mannor to the Jurors aforeſaid in evidence now ſhewed, it doth and may appear. And the Jurors aforeſaid do further ſay upon their oath, That the ſaid *M. G.* after the making of the ſaid Surrender, did declare her Will, Mind, and Deſire to be, and did aſſign, limit, and appoint, That thirty ſhillings out of the ſaid Rents, Iſſues and Profits of the ſaid Tenement and Premiſſes, ſhould yearly, and every year for ever then after, be paid to the Church-Wardens of the Pariſh of *W.* aforeſaid for the time, and from time to time being, for and towards the relief of the poor people of the Pariſh of *W.* aforeſaid. And the Jurors aforeſaid do further ſay upon their oath, That the ſaid *M. G.* on, or about the day of, &c. died, and that the ſaid *D. B* having notice of the charitable Deviſe, Aſſignment, and appointment of the ſaid *M. G.* foreſaid, to and for the pious uſe aforeſaid, did for ſome years after the death of the ſaid *M. G.* hold and enjoy the ſaid Tenement and Premiſſes, and did pay the ſame thirty ſhillings yearly to the Church-Wardens of the ſaid Pariſh, for the relief of the Poor of *W.* aforeſaid accordingly. And the Jurors afore-

ſaid

ſaid do further ſay upon their oath, That ſince the death of the ſaid *M. G.* the ſaid *D. B.* during his life, and from and after his death, *R. B.* Son of the ſaid *D. B.* have held and enjoyed the ſaid Tenement and Premiſſes, and received, and hath taken the Rents and Profits thereof, as owners of the ſame Premiſſes, by vertue, as they affirm, of ſome ſurrender, or other aſſurance thereof made by *J. G.* deceaſed, who was Son and Heir of *M. G.* And that the ſaid *R. B.* and —— *B.* have for the ſpace of theſe eight years, now laſt paſt, detained the ſaid Gift of thirty ſhillings from the ſaid charitable Uſe, to and for which the ſame was Deviſed, aſſigned, and limited, as aforeſaid. And that at the Feaſt of &c. there was, and yet is the ſum of, &c. of the ſaid yearly payment of thirty ſhillings *per annum* ſo Deviſed, limited, aſſigned and appointed by the ſaid *M. G.* to and for the charitable uſe, intent, and purpoſe aforeſaid, behind, arrear and unpaid. *In witneſs*, &c.

II.

Essex ss. AN *Inquisition* indented, taken at the *S.* at *B.* in the said County, the day of, &c. before *J.W. W.E.* &c. Gent. by vertue of a Commission under the Great Seal of *England*, bearing date, &c. to them and divers other persons directed, for the due execution of a Statute made in the High Court of Parliament, holden the 27. day of *October*, in the three and fortieth year of the Reign of the late Queen *Elizabeth*, intituled, *An Act to redress the mis-imployment of Lands Goods, and Stocks of Money heretofore given to charitable Uses*, by the Oaths of *J. F. R. L.* &c. honest and lawful men of the said County, who being duly returned, impannelled and sworn according to the said Statute and Commission, do say upon their oaths, That one *M.B.* on, or about the day of &c. was seized in his Demesne as of Fee, of and in one Messuage &c, And that the said *M.B.* being so seized of the said Messuage and Premisses aforesaid, he the said *M.B.* made his last Will and Testament in Writing, bearing date the day of, &c. and by the same his said Will, did amongst other things, give, demise, and bequeath the said Messuages called *C.* to *A.* his wife, during her life; and after

after her decease, to the Church of *T.* aforesaid, in these words following: *Item, I give &c.* And the Jurors aforesaid do further say upon their oaths That one *T. K.* on, or about the day of &c. did enter into the said Messuages and Premisses called *C.* and by himself and his under-Tenants, possessed and enjoyed the same, and took and received the Rents and Profits thereof during his life, paying only seven Nobles *per ann.* out of the Rents and Profits of the same to the Church-Wardens and Parish of *T.* to and for the charitable Use aforesaid: And the Jurors aforesaid do further say upon their oaths, That after the death of the said *T. K. E. K.* Son of the said *T. K.* now also deceased, entred into the said Messuages and Premisses, and by himself and his under-Tenants, did take and receive the Rents and Profits thereof during his life, and continued the payment of the said seven Nobles *per annum* for the same to the said Church, untill about twelve years last past, at which time the said *E. K.* did refuse to continue the payment of the said 7. Nobles *per ann.* any longer. And the Jurors aforesaid do further say upon their oaths, that the said Messuages, so as aforesaid devised, was divers years since made, divided, and converted into several Tenements. And that the said Messuge or Tenement, called *C.* and now commonly called by the name of the *Church-*

Houſe, is now, and for divers years laſt paſt, hath been in the poſſeſſion of *E. C.* And that the ſaid Houſes, Tenements, and Cottages in *T.* aforeſaid, now in the Tenure or Occupation of *E. P.* Widow, were formerly out-houſes, belonging to, and parcel of the ſaid Meſſuage and Premiſſes with the Appurtenances, called *C. alias* the *Church-Houſe*. And the ſaid Jurors do further ſay upon their Oaths, That the ſaid Meſſuage or Tenement, Houſes and Premiſſes, now are, and for theſe ſix years laſt paſt, have been of the clear yearly value of, &c. above the moneys payable out of the Rents and Profits thereof, to and for the ſuperſtitious uſes above mentioned, and all other charges and reprizes. And the Jurors aforeſaid, do further ſay upon their oaths, That ſithence the death of the ſaid *E. K.* which happened about two years ſince, the Rents of the Meſſuage, Tenement, and other the Premiſſes, have been claimed by *T. K.* Son and Heir of *E. K.* as belonging to him as Son and Heir to his ſaid Father, and that the ſaid Meſſuage, Tenement and Premiſſes have been enjoyed and diſpoſed of by him the ſaid *T. K.* and his under-Tenants, and the Iſſues, Rents, and Profits growing and ariſing out of the ſame for theſe two years laſt paſt, have been received and enjoyed by the ſaid *T. K.* and by him converted to his own particular uſe and benefit. In witneſs whereof,

wheaeof, to one part of this preſent *Inquiſition* delivered by the ſaid Jurors to the ſaid Commiſſioners, and by them to be returned into the high Court of Chancery, as well the ſaid Commiſſioners as the ſaid Jurors have ſet their Hands and Seals. And the other part thereof, remaining with the Fore-man of the ſaid Jurors, the ſaid Commiſſioners have ſet their Hands and Seals the day and year firſt above written.

III.

Devon ſſ. AN Inquiſition, *&c.* By the Oaths of, *&c.* who being duly returned, impannelled and ſworn according to the ſaid Statute and Commiſſion, ſay upon their oath, That on or about the tenth day of *J.* in the twentieth year of the Reign of *Henry* the eighth, late King of *England*. *J.C. R.A. J.C. T.B. W.C. W.S. T.T.* and *T.W.* as Feoffees in Truſt for one *I. B.* ſometimes of *E.* in the ſaid County Yeoman deceaſed, ſtood joyntly ſeiſed of and in their Demeſne as of Fee in one Meſſuage, with the Appurtenances, ſcituate and being in *G.* in the County aforeſaid, *&c.* And that the ſaid *I. C. R. A.* and other the aforeſaid Feoffees, being ſo of the ſaid Meſſuage, Lands and Premiſſes

ſeiſed in Truſt as aforeſaid, the ſaid *I. B.* made his laſt Will and Teſtament in Writing, bearing date the ſixteenth day of *A.* in the ſaid twentieth year of the Reign of the ſaid late King *H.* 8. and by the ſame did will, declare and appoint, that they the ſaid *I. C. R. A.* and other his Truſtees aforeſaid, their Heirs and Aſſigns, and all ſuch other perſon and perſons as ſhould ſtand ſeiſed of the ſaid Meſſuage, Lands and Premiſſes, with the Appurtenances, from time to time, of the Iſſues and profits coming and growing of the ſaid Tenement and Lands, ſhould ſufficiently repair, new build, and maintain the Houſes, Edifices and Buildings of the ſaid Tenement, as often, and when as need ſhould be for evermore. And further, that the ſaid Feoffees, of the Iſſues and profits coming of the ſaid Tenement, Lands and other the Premiſſes, with the Appurtenances, ſhould do, keep and find on the day of the Moneth, that the ſaid *I. B.* deceaſed, or within ſix dayes before, or within ſix days after, an yearly *obit* or *anniverſary* within the aforeſaid Pariſh Church of *E.* for the Soul of the ſaid *I. B.* the Souls of his Father and Mother, his Wife and Children, and all Chriſtian Souls, and that the Feoffees or their Aſſignes, ſhould expend yearly at every *Obit* ſo kept, and for his Name to be had in the Bedroll, 6 *s.* 8 *d.* And that

that all other iſſues and profits coming and growing of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances over and above the ſaid Edifices, and reparations, and the ſaid 6 s. 8 d. for the ſaid *Obit* and *Bedroll* ſhould be expended, diſtributed, and laid out in making and mending of the High-wayes between *H.* in the ſaid County, and the City of *L.* and in other deeds of Piety and Charity, by the diſcretion of two of the ſaid Feoffees. Provided always, that the profits of all Woods and Woodſale, that ſhould come and grow of the Grove called *R.* ſhould be diſtributed one time to the uſe of the aforeſaid Pariſh Church of *E.* and at another time, to the uſe of the Pariſh Church of *T. G.* aforeſaid, the profits of the firſt Woodſale to the uſe of the Pariſh Church of *E.* And further, that two Perſons being Feoffees of, and in the ſaid Tenement, and Lands, and other the Premiſſes, with the Appurtenances, ſhould take and levie to the uſes aforeſaid, all the iſſues and profits of the ſame and to diſtribute and diſpoſe them in manner and form as the ſaid *J. B.* hath before willed and declared: Provided always, that no perſon which ſhould have the levying and gathering of the ſame iſſues and profits of the ſaid Tenements, Lands, and other the Premiſes, with the Appurtenances, ſhould levie and

gather them over and above one whole year together, but that yearly an Election to be made of two perſons of the ſaid Feoffees, to be Renters and Gatherers of the ſaid iſſues and profits, to the uſe and intent before expreſſed; And that the ſaid perſons ſo elected and named Renters and Gatherers, ſhould yearly give up their accompt before the reſidue of the ſaid Feoffees, which ſhall ſtand ſeiſed of, and in the ſaid Tenement, Lands, and other the Premiſes, with the Appurtenances, or before the moſt part of them, on the day of St. *J.* in *Chriſtmas* week, and that every perſon ſo levying and gathering the ſaid iſſues of the ſaid Tenement and Lands, ſhall have for their labour and buſineſs in that behalf, 12 *d.* And that ſuch perſons as were ſeiſed, and infeoffed at the maki g and declaring of his ſaid Teſtament and laſt Will, of and in the ſaid Tenement, Lands, and other the Premiſes, with the Appurtenances, ſhould make an Eſtate and Feoffment of and in the ſame, unto 24 honeſt perſons, dwelling and inhabiting within the aforeſaid Pariſhes of *E.* and *T.G.* And that the ſaid 20 perſons, and their Heirs, ſhould ſtand ſeiſed and enfeoffed of, and in the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, to the uſe and performance of the ſaid Teſtament and laſt Will of the aforeſaid

I.B.

I. B. And at ſuch time, and when it ſhould fortune the ſaid 24 perſons to deceaſe, or void the ſaid Pariſhes to the number of eight perſons, ſo that there were not living and inhabiting within the ſaid two Pariſhes of the ſaid Feoffees, over and above eight perſons, That then the ſaid eight perſons ſo ſurviving and inhabiting, ſhould make an Eſtate and Feoffment of the ſaid Tenement, Lands, and other the Premiſſes, with the Appurtenances, unto 24 honeſt perſons, dwelling and inhabiting within the ſaid Pariſhes, To have and to hold the ſaid Tenement, Lands, and other the Premiſes, with the Appurtenances, unto the ſaid twenty four, and to their Heirs, to the uſe and performance of the ſaid Teſtament and laſt Will of the aforeſaid *I. B.* And as often as it ſhall happen, the ſaid Feoffees to come to the number of eight, in form aforeſaid, The ſame eight perſons ſo often to make an Eſtate and Re-feoffment of the ſaid Tenement, Lands, and other the Premiſes with the Appurtenances, to twenty four honeſt perſons of the ſaid Pariſhes, and ſo from time to time, as often as any ſuch caſe ſhall happen or fall for evermore, as by a certain Indenture bearing date the 29. day of *D.* in the year of our Lord God 1518. and in the ſaid tenth year of the Reign of K. *Henry* the 8th, now ſhewed forth in evidence to the

ſaid

ſaid Jurors, by the preſent Feoffees of the ſaid Tenement and Premiſes more at large it doth and may appear. And the ſaid Jurors do further ſay upon their Oaths, that the ſaid *I.C.R.A.* and others the Truſtees aforeſaid, being ſo ſeiſed of the ſaid Tenement, Land and Premiſes, in Truſt as aforeſaid, They the ſaid *I.C.R.A.* and others the Truſtees aforeſaid, did by a certain Deed or Writing, bearing date on or about the ſaid twentieth day of *D.* in the ſaid tenth year of the Reign of the ſaid King *Henry* the eighth, convey the ſaid Tenement, Lands, and Premiſes, with the Appurtenances, unto *I. A.* of *E.* aforeſaid Mercer, and *I.W.* of the ſame, Yeoman, their Heirs and Aſſigns, to fulfill the Will of the ſaid *I.B.* And that they the ſaid *J. A.* and *I.W.* being of the ſaid Tenement, Lands, and Premiſes, with the Appurtenances ſeiſed, They the ſaid *I. A.* and *I.W.* did by their Deed of Feoffment executed by Livery and Seiſin, bearing date the ſaid 29 day of *D.* in the ſaid tenth year of the Reign of the ſaid King *Henry* the eighth, convey the ſaid Tenement Lands and Premiſes, with the Appurtenances unto *R. A.* of *T. G.* aforeſaid, *R. A.* and *W. A.* Sons of the ſaid *R. W. A.* the elder; *F. A.* Son of the ſaid *W. A.* the elder, *T. T.* alias *L. R. I. T.* Son of the ſaid *T.T.H.A.* Son of the ſaid *I.A.H.B.R.B.* Son of

of the ſaid *H.B.W.N.* the younger, *I.P.W.P.* Sons of *R.P.R.P.* the younger, *T.M.* the elder of *T.G.* aforeſaid, *T.T.* Son of *H.T.W.C.W.S. W.A.* Son of *I.A.W.S. I.S.* Son of the ſaid *W.S. T.S. I.S.* Sonne of the ſaid *T.S. I.W.* Son of *R.W.I.B.* the elder, *H.H.* the younger, and *S.* Son of *W.S. W.B.* Son of *B.B.* and *I.P.* of *E.* aforeſaid, as by the ſaid laſt recited Deed of Feoffment, now alſo ſhewed forth in evidence to the ſaid Jurors, by the ſaid now preſent Feoffees of the ſaid premiſes may appear: And the ſaid Jurors do further ſay upon their Oaths, That about *N.* in the ſixth year of the Reign of the late Queen *Eliz.* *H.A.* and *R.A.* Sons of *W. A.* deceaſed; *I. R.* and *I. R.* Son of the ſaid *I.F.A.* and *R.A.* Son of the ſaid *F.S.A.* Son of *H.A.* deceaſed, *I W.* Son of *I.W.* deceaſed, *I. A.* Son of *I. A.* of *B.* deceaſed, *W.C.* Son of *W.C.* of *T. G.* aforeſaid, *W. A.* and *I. A.* and *I. A.* Son of the ſaid *W.S.A.* and *T.A.* Sons of the ſaid *H.A.* deceaſed, *I. S.* and *A. S.* Son of the ſaid *I.S.* Son of *T.S.* deceaſed, and *S.* Son of *T.S. I.S.* Son of *E.S.* deceaſed, and *I.B.* the elder of *E.* aforeſaid, being then Feoffees of the ſaid Tenement, Lands, and Premiſes, with the Appurtenances, they the ſaid laſt mentioned Feoffees, did then exchange with one *F. L.* a certain parcel of Meadow called *C.* parcel of the ſaid Lands, before mentioned, containing by eſtimation

estimation two Acres and a half, or thereabouts, for two Acres and a half of Land called *A*, lying amongst other Lands, that were the said *B.* the which two Acres and a half of Lands so taken and exchanged by the said Feoffees, from the said *F. L.* the said Feoffees and their Assigns have quietly enjoyed ever since; but whether the said Lands taken in exchange, be of equall yearly value with the Meadow given in exchange, by the said Feoffees, to the said *F. L.* the said Jurors know not.

And the said Jurors do further say upon their Oaths, That the said Tenement, Lands, and Premisses, with the Appurtenances that were the said *J. B.* have heen ever since the said *B.* death continued in Feoffment to divers and sundry persons, by several Conveyances, to the use and performance of the Will of the said *J. B.* as appears by divers Deeds unto the Jurors aforesaid, in Evidence therein, at the time of the taking of this *Inquisition*, and that upon view of the said Evidences, it appeared that divers Feoffments have been made of the said Premisses by surviving Feoffees, to their Children, and others of their Alliance, by which means the Intereſt of the said Premisses hath been continued in the name and bloud of several Families, that have lived in the said Parishes, and that thereby divers

vers Knights, Eſquires, and Gentlemen of worth and quality have been left out, that have been then Inhabitants of the ſaid Pariſhes. And the Jury aforeſaid do further ſay upon their Oaths, that the ſaid Tenement, Lands, and Premiſſes, with the Appurtenances, are now by mean Conveyance and Aſſurance, come unto *J. S.* of *E.* aforeſaid Gent. *W. C.* of *T. G.* aforeſaid, Gent. *A. S.* of *E.* aforeſaid Gent. and to divers others, being in all about 18 in number, and that the ſaid *J. S.* and *A. S.* and their Anceſtors, have been Feoffees of the ſaid Premiſſes, ever ſince the year of our Lord God, 1611. and that they and the other Feoffees now living, claim no Intereſt in the ſaid Premiſſes, but as Feoffees in Truſt for performance of the Will of the ſaid *J. B.* and the ſaid *I. S. W. C. A. S.* and divers other of the now Feoffees, appearing before the ſaid Commiſſioners, and the ſaid Jurors, at the time and place firſt above mentioned, and did then and there produce two Books that have been kept by them and others, under whom they claim, wherein are ſet down the Accompts of the yearly Revenues and Profits that have been made of the ſaid Premiſſes, from the year of our Lord God 1587. and divers years before, until this preſent. And upon our view of the ſaid Books it appeareth, that the Truſt of the ſaid Will hath been managed

ged by ſome few of the 24. Feoffees, the reſidue giving an implicite Conſent to what ſuch few ſhould do, both concerning the beſtowing of the yearly Revenue of the ſaid Premiſſes, and of the ſaid Woodſales, as alſo in Election of Rent-gatherers, and in making up an Allowance of the yearly Accompts. And it did alſo further appear by view of the ſaid Books, that the yearly Accompts therein ſet down are imperfect, and that there are many alterations in the figures of the Sums of Money, expended by the ſaid Rent-gatherers, and that the Accompts therein ſpecified, are for the moſt part made by Diſburſements of Sums of Money in the general, with reference unto particular Bills, not ſet down in the ſaid Books, and that at one time, or in two or three years together, no Accompts were made by the Rent-gatherers: And that the ſaid Feoffees have failed to elect yearly new Rent-gatherers; And that they have allowed unto the Tenant of the ſaid Houſe and Lands, out of his Rent, ſometimes 40 *s.* for a Dinner, at their meeting; And that the ſaid Feoffees and Rent-gatherers, have from time to time kept moneys in their hands, which they have received for Rent of the ſaid Houſe and Lands, which they call in their Books of Accompts, Houſe-money; And divers Sums of Money which they have received

ceived by Sale of the Wood in *R. W.* which they call Church-money; And that ſometimes they have expended the Houſe-money upon the Church; and ſometimes the Church-money upon the High-ways; and have entred their Accompts, as Money borrowed of the Church, for the houſe; and of the houſe, for the Church; And they have brought into Accompt divers Summs of Money, to have been expended by them yearly upon the ſaid Churches of *E.* and *T. G.* And the *Ms.* and *Cs.* having Certificates in Writing, what moneys have been expended yearly by the ſaid Rent-gatherers, in repair of the ſaid Churches, from the year 1611. untill this preſent time; and upon comparing the ſaid Certificates, with the ſaid Books of Accompt, It doth appear, That in ſome years, wherein the ſaid Rent-gatherers have ſet down in their Accompts, to have expended moneys in the repair of the ſaid Churches, that nothing was then ſet down in the ſaid Church-Books, to have been expended by the ſaid Rent-gatherers; in ſome years the Sums of Expenſes do agree with the Church-Book; in ſome years more is ſet down in the Rent-gatherers Book, to have been expended upon the ſaid Churches, then is in the ſaid Church-Book. And the ſaid Jurors, do further ſay upon their Oaths, That ſithence the year

1611.

1611. until this preſent, divers Feoffees, ſome whereof are yet living, have been at ſeverall times Rent-gatherers and Feoffees; And that for the moſt part of that time, the yearly Revenue and Rent of the ſaid Houſe and Lands, have been about 20 *l.* which according to their Accompts, hath been expended yearly in repair of the High-ways, between *M.* and ſome 3. or 4. miles of *E.* and for their Dinner at their Meetings, and by giving of 40 *s.* or more, in ſome years, to ſeveral poor perſons, inhabiting in the ſaid Pariſhes; And that in that time Wood-ſales have been made of the Woods growing in *R.* Grove; and that the moneys thereupon ariſing, have been kept in their hands theſe three years, and they have new built the ſaid houſe called *S.* and improved the ſaid Tenement and Lands to be worth 26 *l.* 13 *s.* 4 *d.* *per annum*, to be letten: And further the ſaid Jurors do ſay upon their Oaths, that the yearly Expenſes of the ſaid Feoffees, have been by Auditors (appointed by the ſaid Commiſſioners, in the preſence of ſome of the ſaid Feoffees) caſt, and upon, and by the ſaid Auditors Certificate it appears, that over and above all Charges and Expenſes by the ſaid Feoffees, untill this preſent time, in building the ſaid houſe, repair of the High-ways, Gifts of Money to poor People,

Moneys

Moneys expended in Dinners, and repair of the ſaid Churches, there doth at this time remain in the hands of *J. S.* &c. the now Feoffees of the ſaid Tenement, Lands, and Premiſſes, or in the hands of ſome of them, the Sum of 54 *l.* 14 *s.* 5 *d.* or thereabouts, to the Church of *E.* and 56 *l.* 5 *s.* 1 *d.* or thereabouts, unto the Church of *T. G.* The which ſeveral Sums, divers of the Pariſhioners of the ſaid ſeveral Pariſhes of *T G* and *E.* of good ability, have deſired the ſaid Feoffees to deliver unto them for a Church-Stock for their ſeveral Pariſhes, to be by them beſtowed to the uſe of the ſaid ſeveral Churches, according to the ſaid Will of the ſaid *J. B.* But they the ſaid now Feoffees, or ſome of them, have and do refuſe to deliver the ſame unto them. And the ſaid Jurors do further ſay upon their Oath, That ſometimes the ſurviving Feoffees have ſuffered the Intereſt of the ſaid Premiſſes to continue in them, untill under the number of 8. Feoffees were ſurviving, and Inhabitants of the ſaid Pariſhes. And that the ſaid laſt Feoffment, made of the ſaid Premiſſes, by the then ſurviving Feoffees, divers of the ſaid laſt Feoffees are ſince dead; ſo that at this preſent, they are but to the number of 19 Feoffees, living and inhabiting within the ſaid Pariſhes of *E.* and *T. G.* *In witneſs*, &c.

IV.

Devon. ss. AN *Inquisition* taken, &c. Before &c. By vertue of a Commission under the Great Seal of *England* bearing date at *Westminster*, the 6th day of *M.* in the year of our Lord God, 1650. to them, and divers other persons, dwelling and inhabiting within the said County directed, for the due execution of a Statute, made in the High-Court of Parliament, holden the 27. day of *O.* in the 43. year of the Raign of our late Soveraign Lady Q. *Elizabeth*, Entituled, *An Act to redress the mis-imployment of Lands, Goods, and Stocks of Money, heretofore given to Charitable Uses*, by the Oaths of, &c. good and lawful men of the said County of *D.* who being sworn &c. say upon their Oath, That *J. T.* late of *L.* Merchant, deceased, was in his life-time, and at the time of his death, possessed of a personal Estate of great value: And that the said *J. T.* did heretofore make his last Will and Testament, bearing date the 10th day of *O.* which was in the year of our Lord God, 1649. And by the same Will did nominate, constitute, and appoint *W. L.* of *T.* and *T. H.* of *L.* in the County of *C.* Gent. the Executors of the said Will:

Will: And that afterwards the ſaid *J. T.* did make a *Codicil*, which was annexed to his ſaid laſt Will and Teſtament, and which he did appoint to be part of his ſaid Will: And that the ſaid *J. T.* in and by the ſaid *Codicil*, did among other things, make ſuch recital, diſpoſition, limitation, and appointment, as followeth in theſe words, That is to ſay, And whereas I have not finiſhed the *Alms-houſes* by me already begun, and do intend that eight poor people of the ſaid Pariſh of *M.* ſhall be placed therein, when finiſhed, and receive 50 *s.* apiece yearly by quarterly payments, for their maintainance, during their lives, and purpoſe that the ſame ſhall be ſo continued and ſupplied for ever, with poor people of that Pariſh, and with that yearly maintainance. Now I *J. T.* Teſtator, named in the ſaid Will, do hereby will and appoint mine Executors, *W. L.* and *T. H.* in my ſaid Will named, to finiſh the ſaid *Alms-houſes* with all ſpeed, out of the Surpluſs of my Eſtate, not diſpoſed by the ſaid Will, nor by this *Codicil*, and likewiſe therewith to purchaſe ſo much Freehold Land in Fee-ſimple, and ſettle and aſſure the ſame upon Feoffees, for the maintainance of 8. poor people of *M.* Pariſh aforeſaid for ever, to be placed in the ſaid *Alms-houſes* at *M.* aforeſaid, as ſhall be convenient. And the Jurors

aforeſaid do further ſay upon their Oaths, That the ſaid *J. T.* afterwards, That is to ſay, on the 22. day of *D.* Died. And that the ſaid *W. L.* and *T. H.* proved the ſaid Will and *Codicil* of the ſaid *J. T.* and took upon them the Execution hereof: And that they the ſaid *W. L.* and *T. H.* after the death of the ſaid *J. T.* did finiſh the Building of the ſaid *Alms-houſes* before mentioned, out of the Eſtate of the ſaid *J. T.* And that the ſaid *T. H.* did place 8. poor people in the ſaid *Alms-houſes* there: But the Jurors aforeſaid, do likewiſe ſay upon their Oaths, That the ſaid *W. L.* and *T. H.* in the ſaid Will of the ſaid *J. T.* named, have not, nor either of them, hath out of the Eſtate of the ſaid *J. T.* (appointed or limited for that purpoſe, or otherwiſe) as yet purchaſed, ſetled, or aſſured Freehold Land in Fee-ſimple, of the clear yearly value of 20 *l.* by the year, as by the ſaid Will and *Codicil* is intended and appointed upon Feoffees or Truſtees, for the maintainance of 8. poor people of *M.* aforeſaid for ever; placed, and to be placed in the ſaid *Alms-houſes*, as by the ſaid *Codicil* is directed, limited, and appointed; And that in further breach of the Truſt in them, the ſaid *W. L.* and *T. H.* repoſed in and by the ſaid Will and *Codicil.* They the ſaid *W. L.* and *T. H.* have not paid unto the poor people, for-

formerly placed in the ſaid *Alms-houſes*, and now remaining there, namely *A. B.* &c. their ſeverall and reſpective yearly Allowances of 50 ſhillings the year, appointed them by the ſaid *J. T.* as aforeſaid, by the ſpace of two years, ending at the Feaſt of the *Annunciation* of the Bleſſed Virgin *Mary* laſt paſt, amounting in all, to the Sum of 20 *l.* but do detain and withhold the ſame money from them the ſaid poor people. And the ſaid Jurors do further ſay, upon their Oaths, That the ſaid *W. L.* and *T. H.* have Aſſets of the ſaid *J. T.* in their hands (of the Surpluſs of his Eſtate, not diſpoſed of by his ſaid Will and *Codicil*) ſufficient to purchaſe ſo much Free-hold Land in Fee-ſimple, as may be convenient for the maintainance of 8. poor people, placed and to be placed in the ſaid *Alms-houſes*, in ſuch manner as the ſaid *J. T.* hath in and by his ſaid Will and *Codicil* willed, directed, limited, and appointed. *In witneſs*, &c.

CHAP. V.

DECREES.

I.

Devon. ſſ. AT *S.* in the ſaid County, the 19. day of *J.* in 11. year of the Raign of our Soveraign Lord *Charles*, by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c.

Whereas a Commiſſion under the Great Seal of *England*, bearing date at *Weſtminſter* the 8th day of *Feb.* laſt, hath been directed amongſt others to Sir *W. R.* Kt. &c. and to divers other perſons, dwelling and inhabiting within the ſaid County, authorizing them, or any 4. or more of them, to enquire, as well by the Oaths of 12. good and lawful men, or more of the ſaid County, as by other good and lawful ways and means, of all and ſingular Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, and Stocks of Money, heretofore given, limited, appointed, and aſſigned, by any well-diſpoſed perſon, to or for any the charitable and godly uſes in the ſaid Commiſſion mentioned within the ſaid County. And of the Abuſes, Breaches of Truſts,

Truſts, Negligences, Miſ-imploymens, not imploying, concealing, defrauding, miſ-converting, or miſgovernment of the ſaid Lands, Tenements, Rents, Annuities, and other things; and for the ſetting down ſuch Orders, Judgments, and Decrees, as that the ſame Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, and Stocks of Money, may be duly and faithfully imployed, to and for the Charitable Uſe and Intents for which they were given, limited, aſſigned, or appointed by the *Donors* and *Founders* thereof, according to a Statute made in the 43. year of the Raign of the late Q. *Elizabeth* entituled, *An Act to redreſs the miſ-imployments of Lands, Goods, and Stocks of Money, given to Charitable Uſes.* And whereas the ſaid Sir *W. R.* &c. being 7 of the Commiſſioners named and authorized, in and by the ſaid Commiſſion, meeting for the execution of the ſaid Commiſſion, at the day and place aforeſaid; it was then and there found by the Oaths of *F. M. J. B.* &c. good and lawful men of the ſaid County, duly ſummoned, impannelled, and ſworn, according to the ſaid Statute and Commiſſion, th t *A. B.* &c. and *J.* his Wife, by their Writing under their Seals, bearing date the 20th day of *J.* in the 5th year of the Raign of the ſaid Queen; and by and according to a Grant and Licenſe from the ſaid Queen duly

obtained, did Found, Erect, and incorporate a Free-School in *C.* by the name of the *School-Maſter* and *Guardians* of the Lands, Tenements, and Poſſeſſions of the *Grammar-School* of *A. B.* Eſq; in *C.* in the County of *D.* and did name and appoint *G. H.* Presbyter, *School-Maſter*, and *A. B.* and *C. D.* Guardians of the ſaid Lands, Tenements, and Poſſeſſions, who by vertue thereof were *School-Maſter* and *Guardians* of the Lands, Tenements, and poſſeſſions, of the ſaid *Grammar-School*, and became and were one Body Corporate and politick, both in name and thing: And that the ſaid School being ſo erected, founded, and eſtabliſhed, and the School-Maſter thereof, and the Guardians of the Lands, Tenements, and poſſeſſions of the ſame School, being a Body Corporate and politick, as aforeſaid, the ſaid *A. B.* did make his laſt Will and Teſtament in Writing, bearing date &c. and by the ſame his ſaid laſt Will, according to the Licenſe of the ſaid Queen in that behalf granted, did (among other things) give and bequeath to *J. G.* the Mannor of *D.* with the Appurtenances, in the ſaid County of *D.* for the term of 21. years, paying yearly, during the ſaid term, the Rent of 20 *l.* And that the ſaid *A. B.* by the ſame his ſaid Will, did give and bequeath the Reverſion and Remainder thereof, with the ſaid Rent, to the ſaid School-Maſter and Guardians,

To

To have and to hold the ſaid Mannor, and the ſaid Rent, and the Reverſion thereof, to them and their Succeſſors for ever, to the intent, that with the Iſſues and profits thereof, they ſhould find 6 poor Folks in *S.* in ſuch manner, as by him or his Executors ſhould be appointed. And that afterwards, in the Term of *Eaſter, viz.* On *Wedneſday*, being the 3. day of *May*, in the 20th year of the Reign of our ſaid late Soveraign Lady Q. *Eliz.* It was (among other things) by the Right Honourable Sir *N. B.* Kt. then *Lord Keeper* of the Great Seal of *England*, and her Majeſties Court of *Chancery* (by the aſſent and conſent of *W. B.* Eſq; Coſin and Heir to the ſaid *A. B.* Patron of the ſaid *Grammar-School*), Ordered, Adjudged, and Decreed, That the Statutes, Ordinances, and Conſtitutions of and for the ſaid *Grammar-School*; and of and for the relief of certain poor people within the Pariſh of *S.* aforeſaid, of the Foundation of the ſaid *A. B.* and Dame *J.* his Wife, ſhould be made and ordered by the Appointment of *E.* then Biſhop of *Exeter*, or of his Succeſſors, and of *A. N.* then Dean of the *Cathedral-Church* of St. *P.* in *E.* or his Succeſſors, and of the ſaid *W. B.* or his Heirs, and that *G.* la e Biſhop of *E.* Succeſſor to the ſaid *E.* Biſhop of *London*, or *A. B.* of *S.* aforeſaid Kt. Coſin and Heir to the ſaid *A. B.* deceaſed, and

Coſin

Coſin and Heir to the ſaid *W. B.* Eſq; and Patron of the ſaid *Grammar-School*, and *J. D.* Dean of the ſaid *Cathedral Church* of St. *P.* in *E.* by a certain Writing indented, bearing date the 8 h day of *J.* in the 10th year of the Reign of our late Soveraign Lord King *James*, over this Realm of *England*, *An. Dom.* 1612. did in performance of the ſaid *Decree*, make, ordain, publiſh, and declare, divers Statutes, Ordinances, and Conſtitutions, concerning the ſaid *Grammar-School*, the *School-Maſter*, Guardians, and Poſſeſſions of the ſame; and that they the ſaid *G.* Biſhop of *E.* Sir *A. B.* the Heir of *J. D.* Dean of St. *P.* did in and by the ſaid Writing indented (amongſt other things) by vertue of the ſaid *Decree* in particular, make, ordain, publiſh, and declare, certain Ordinances and Conſtitutions, concerning the Lands, Tenements, and poſſeſſions of the ſaid *School*, in theſe words following: *Item*, All Leaſes to be made by the ſaid Corporation of any their Lands, Tenements, or Hereditaments, being in the hands of any Farmer or Farmers, by vertue of any old or former Leaſe for years, ſhall be utterly void, unleſs the ſame old or former Leaſe for years be within 14 years expiration of the ſaid years, by effluction of time at the making of the ſaid new Leaſe, and be ſurrendred within one year next after the making of the ſame Leaſe. *Item*, The ſaid Corporation

ſhall

ſhall do their beſt edeavour for the preſervation and advancement of their Poſſeſſions, Rents and Revenues, without m king or conſenting to any diſheriſon to be had or made to the ſaid Corporation in any thing. *Item*, The ſaid *School-Maſter* and Guardians ſhall not have any power to do or ſuffer any act to the diſheriſon of the ſaid Co poration, without the conſent of the Biſhop of *E.* and of the Patron for the time being: And that *G.H.* late *School-Maſter* of the ſaid *Grammar-School*, and *I.W.* and *W.C.* late Guardians of the Land:, Tenements and Poſſeſſions of the ſame *School*, by a certain Deed indented, written in Parchment, and ſealed with the commonSeal of the ſaidCorporation, bearing date the 10 day of *J.* in the ſecond year of the Reign of his Majeſty that now is, did with one aſſe t and conſent, Demiſe, Grant, Betake, and to Farm let, unto one *F. R.* late of *L.* Gent. his Executors and Aſſigns, the ſaid Mannor of *D.* with the Appurtenances thereunto belonging, for the term of one and twenty years, to commence from the Feaſt-day of the birth of our Lord God, then laſt paſt before the date of the ſame Indenture of Demiſe, at, for, and under the yearly Rent of 20 l. of lawful money of *England*.

And

And the ſaid *T. W.* late *School-maſter* of the ſaid *Grammar-School*, Succeſſor to the ſaid *G. H.* and *J. F.* and *G. O.* Guardians of the Lands, Tenements, and Poſſeſſions of the ſame *School* by a certain Indenture, bearing date the 8. day of *N.* in the 13. year of his now Majeſties Reign, reciting the ſaid former Leaſe ſo made to the ſaid *F. R.* as aforeſaid, did Demiſe, Grant, Set, and to Farm let, unto *H. J.* late of *P.* in the ſaid County of *D.* Eſquire, his Executors and Aſſigns, all that the aforeſaid Mannor of *D.* with the Appurtenances, together with all the Lands, &c. thereunto belonging, To have and to hold the ſaid Mannor and Premiſſes to the ſaid *H. J.* his Executors, Adminiſtrators, and Aſſigns, from the end and expiration of the ſaid firſt mentioned Indenture of Leaſe, *That is to ſay*, from the Feaſt of the Birth of our Lord God, which ſhall be in the year of our Lord God, 1642. unto the end and term of one and twenty years from thenceforth, next and immediately enſuing, and fully to be compleat and ended, for and under the yearly Rent of 50 l. of lawful money of *England*: and that the ſame laſt mentioned Leaſe or Demiſe was allowed of by *P. L.* and Dame *E. B.* his Wife, as Patrons of the ſame *School*: And that the ſaid old or former Leaſe made and granted of the ſaid Mannor of *D.* and Premiſſes, with

with the Appurtenances by the ſaid *J. H.* precedent *School-maſter*, and the ſaid *T. C. J. W.* and *W. C.* to the ſaid *F. R.* as aforeſaid, was not within 14 years of expiration of the years thereby granted by effluction of time at the making of the ſaid new Leaſe by the ſaid *T. C. J. W.* and *G. G.* to the ſaid *H. J.* as foreſaid, neither was the ſame old or former Leaſe ſo made and granted to the ſaid *F. R.* by the ſaid *J. H.* and *J. B.* as aforeſaid, ſurrendred or otherwiſe avoided within one year next after the making of the ſaid new Leaſe to the ſaid *H. J.* nor at any time ſithence. And that the ſaid Mannor of *D.* yet is, and at the time of the making of the ſaid Leaſe to the ſaid *H. J.* was worth 60 l. of lawful money of *England*, *per ann.* And that the ſaid *T. C.* is dead, and that *T. O.* Presbyter, is now *School-Maſter* of the ſame *Grammar-School* of the ſaid *A. B.* Eſq; in *D.* aforeſaid. And that neither the ſaid *A. B.* nor *J.* his Wife made any direction, otherwiſe then as aforeſaid, touching the Iſſues and Profits of the ſaid Mannor, as by the Inquiſition hereunto annexed, relation being thereunto had, more at large it doth and may appear. Now, for as much as it appeareth by the Inquiſition before recited, That by the Statutes, Ordinances and Conſtitutions concerning the *Grammar-School* before mentioned, and the

Lands,

Lands, Tenements, and Poſſeſſions thereof: All Leaſes made by the ſaid Corporation of any their Lands, Tenements, or Hereditaments, being in the hands of any Farmer or Farmers, by vertue of any old or former Leaſe for years, ſhall be utterly void, unleſs the ſame old or former Leaſe for years be within fourteen years of expiration of the ſaid years by effluction of time at the making of the ſaid new Leaſe, and be ſurrendred within one year next after the making of the ſame Leaſe: And for that it appeareth likewiſe by the ſaid Inquiſition, That the old or former Leaſe therein mentioned to be made and granted of the Mannor of *D.* before mentioned by the ſaid *J.H. J.F.* and *G.O.* to the aſo eſaid *R.F.* as aforeſaid, was not within fourteen years of expiration of the years thereby granted by effluction of time, at the making of the ſaid new Leaſe by the ſaid *T.C. J.W. G.G.* to the ſaid *J.H.* as aforeſaid: And that the ſame old or former Leaſe ſo made and granted to the ſame *R.F.* by the ſaid *J.H.* and *J. F.* and *G. O.* as aforeſaid was not ſurrendred, nor otherwiſe avoided within one year next after the making of the ſaid new Leaſe to the ſaid *R. F.* or ever at any time ſince: And for that it appeareth, and therefore the making of the ſaid new Leaſe was a breach of Truſt in the ſaid *School-maſter* and Guar-

Guardians: Further alſo it appeareth by the ſaid Inquiſition, That the ſaid Mannor and Premiſſes ſo demiſed and granted to the ſaid *H. J.* as aforeſaid, at the Rent of 50 l. *per ann.* is worth 60 l. *per ann.* to be let; therefore, and for other the matters and things in the ſaid Inquiſition appearing, the ſaid Sir *W. R.* &c. being ſix of the Commiſſioners named and authorized in and by the ſaid Commiſſion, upon full hearing and debating of the matter by the Councel, learned in the Laws, appearing before the ſaid Commiſſioners, as well on the behalf of *T. J.* Son of the ſaid *H. J.* who claimeth an Intereſt in the ſaid Mannor of *D.* for divers years yet to come, under colour of the Leaſe before mentioned, made by the ſaid *J. H. J. B.* and *G. O.* to the ſaid *H. J.* as aforeſaid, do by vertue of the ſaid Statute and Commiſſion, order, adjudg and decree, That the ſaid Leaſe made and granted by the ſaid *J. A. J. B.* and *G. O.* to the ſaid *H. J.* was made contrary to the intent of the *Donor* of the ſaid Lands, and contrary to the Ordinances and Conſtitutions appointed for, and concerning the ſaid *School*, and the Lands, Tenements, and Poſſeſſions thereof, and is not warranted by all or any of them, but was and is an abuſe and miſgovernment of the ſaid Mannor and Lands, and

a breach of Truſt in the ſaid *T. O. School-maſter* of the ſaid *Grammar-School*, *I. B.* and *G. O.* Guardians of the Lands, Tenements, and Poſſeſſions of the ſaid *School*, and is a great and apparent prejudice and hinderance to the due and faithful imployment of the profits of the ſame, according to the intent of the *Donor*, and a defrauding of a charitable Uſe within the ſaid Statute, and that the ſaid Leaſe, and the ſaid Mannor and Lands, and the Indenture of Demiſe for the paſſing of the ſame to the ſaid *F. R.* is, and from henceforth ſhall be, utterly void and of none effect. And the ſaid Commiſſioners do further order, adjudg and decree, That the ſaid *T. O. School-maſter*, and the Guardians of the Lands, Tenements, and Poſſeſſions of the ſame *School*, for the time being, ſhall and may Demiſe, Grant, and to Farm let, the ſaid Mannor of *D.* in ſuch manner as by the ſame Ordinances and Conſtitutions concerning the ſaid *School*, *School-maſter*, and the Lands, Tenements, and Poſſeſſions thereof, is limited, declared, ordained, and appointed; The ſaid Leaſe ſo made of the ſame Mannor and Lands to *F. R.* aforeſaid notwithſtanding: And they the ſaid Commiſſioners do further Order, Adjudg, and Decree, That the ſaid *T. R.* Eſquire, Son of the

the ſaid *F. R.* ſhall within one Month after notice of this Decree, deliver the Indenture of the ſaid Leaſe made unto the ſaid *F. R.* of the ſaid Mannor and Premiſſes as aforeſaid, to the ſaid *T. O.* or his Succeſſors, and Guardians of the Lands, Tenements, and Poſſeſſions of the ſame *School* for the time being, to be cancelled; and ſhall likewiſe within that time pay unto the ſaid *T. O.* the Sum of 10 l. of lawfull Money of *England*, for his Charges and Expences, in ſuing out the ſaid Commiſſion, and in the proſecution of the ſaid Inquiſition and this Decree. *Witneſſe*, &c.

II.

AT *R.* within the ſaid County, on Tueſday the ninth day of *September*, in the one and twentieth year of the Raign of our Soveraign Lord *Charles* by the Grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* *An. Dom.* 1645. Whereas a Commiſſion under the Great Seal of *England*, bearing date the eighth day of *February* laſt paſt, hath been directed to *W.C.I.H.C.M.G.W.* Eſquires, and *G. M.* Gent. and to divers other perſons dwelling and inhabiting within the ſaid County, authorizing them, or any four or more of them, to enquire by the Oaths of twelve good and lawful men, or more of the County, as by all other good and lawful wayes and means of all and ſingular Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Mony, and Stocks of Mony heretofore given, limited, appointed appointed and aſſigned by any well diſpoſed Perſon, to or for any the Charitable and Godly uſes in the ſaid Commiſſion

miſſion mentioned, within the ſaid County; And of the Abuſes, Breaches of Truſts, Negligences, Miſ-imployments, not Imploying, Concealing, Defrauding, Miſ-converting, or Miſ-government of the ſame Lands, Tenements, Rents, Annuities, and other things; and for the ſetting down ſuch Orders, Judgments & Decrees, as that the ſame Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money, and Stocks of Mony may be duly and faithfully imployed to and for the Charitable uſes and intents, for which the ſame were given, limited, aſſigned, and appointed by the Donors and Founders thereof, according to a Statute made in the 43. year of the Raign of the late Queen *Elizabeth*. Intituled, An Act made to redreſs the Miſ-imployments of Lands, Goods, and Stocks of Mony heretofore given to Charitable uſes: And whereas the ſaid *W.C. I.H. C.M.* and *G. M.* being four of the Commiſſioners named and authorized in and by the ſaid Commiſſion, meeting for the execution thereof, at the day and place aforeſaid. It was then and there found by the Oaths of *I.F. R.L.* &c. good and lawful men of the ſaid County, That one *A.B.* as in and by the ſaid Inquiſition hereunto annexed, it doth and may appear, *&c.* Now they the ſaid *W.C. I.H. C.M. G.W.* and *G. M.* having

heard the ſaid *T. H.* and his Councel touching the Premiſes; and being of opinion, that the gift of the ſaid Meſſuage, Tenements and Premiſes by the ſaid *A. B.* in manner and form aforeſaid, is a good Gift, Limitation, Appointment, and Aſſignment of the ſame Meſſuage, Tenements, and Premiſes to and for the ſaid Charitable uſe within the intent of the Statute before mentioned; And for that it appeareth to the ſaid Commiſſioners by the ſaid Will and Inquiſition, that but onely part of the Iſſues and Revenues of the ſaid Tenements and Premiſes, were appointed by the ſaid Will, to be beſtowed to the maintenance of the ſuperſtitious uſes therein mentioned, and that the value of the mony appointed for the ſaid ſuperſtitious uſes, doth not amount to above twenty ſhillings *per annum*, at the moſt; And for that it doth not appear unto the ſaid Commiſſioners, that any part of the Rents and Tenements and Premiſes, Profits of the ſaid were at any time within five years before the firſt day of the Parliament begun, the fourth day of *November* 1547. and in the firſt year of the Reign of King *Edward* the ſixth, late King of *England*, imployed, paid, or beſtowed to the maintenance of the ſaid *Obit*, and other the ſuperſtitious uſes before men-

mentioned, or any of them; And foraſmuch as it appeareth by the intent of the ſaid Will, that Feoffees ought to be appointed ſucceſſively, and the ſaid Houſe and Premiſes were to be conveyed unto them, for the more legall and faithfull continuance and imployment of the Rents and Profits of the ſame, to the charitable uſe aforeſaid: to the end, intent, and purpoſe, therefore, that the Rents and profits of the ſaid Lands, Tenements, and Premiſes, may be duly and faithfully imployed in and for the charitable uſe, to and for which the ſame were limited, appointed, and aſſigned by the Donor thereof, as aforeſaid; They the ſaid *W. C. I. H. C. M.* and *G. M.* do by vertue of the ſaid Statute and Commiſſion, Order and Decree that the ſaid *T. H.* the Grandchild, *T. C. J. C.* and all and every other perſon and perſons now holding, occupying, or enjoying the ſame Meſſuages, Lands, Tenements, and Premiſes before mentioned, to and for the maintenance of the Charitable uſe before mentioned, and every of them, ſhall within one month next after notice of this Decree, leave, ſurrender and yield up the Poſſeſſion of the ſaid Meſſuages, Lands, Tenements, and Premiſſes, unto, or for the Church-wardens of *T.* aforeſaid, and that the ſaid Church-wardens ſhall within three months next after they ſhall be actually poſſeſſed of the

ſaid Lands, Tenements, and Premiſſes, make and execute a Feoffment of the ſame Lands, Tenements, and Premiſſes, to the uſe of themſelves, and 13. others of the Pariſhioners of *T.* aforeſaid, and their Heirs in ſuch manner, as by Councel learned ſhall be adviſed and directed, to the end, intent and purpoſe, that the Feoffes in ſuch Feoffment to be named, and their Heirs, may ſtand and be ſeiſed of the ſame Lands, Tenements, and Premiſſes, upon truſt and confidence, that they and their Heirs ſhall permit and ſuffer the Church-wardens of the ſame Pariſh for the time being, to receive and take the Rents and Profits of the ſame Premiſes from time to time as the ſame ſhall ariſe, become due, and payable, to and for the reparation of the ſaid Pariſh-Church of *S.* aforeſaid, as often, and when as need ſhall require; and that when ten or more of the ſaid Feoffes of the Premiſſes ſhall be dead (or before if it ſhall be thought expedient) the ſurviving Feoffees ſhall make a new Feoffment of the ſame Premiſſes, to the uſe of themſelves, and of ſo many more of the Pariſhioners of *T.* aforeſaid, as ſhall make it the number of fifteen; And that that order and rule ſhall be obſerved in all ſucceeding Generations; And the Commiſſioners aforeſaid do further order, adjudge, and decree, that the Churchwardens

dens of *T.* aforeſaid, for the time being, ſhall upon *Tueſday* in the *Eaſter* week, yearly give up true and perfect accounts in writing to the Feoffes of the Premiſſes, or the major part of them in the Pariſh-Church of *T.* aforeſaid, of their Receipts and Diſburſements of, touching, and concerning the Rents and Profits of the Premiſſes; And if it ſhall upon ſuch account appear, that any monies are remaining in their hands, that then the ſaid Church-wardens ſo accounting, ſhall within one month then next following, deliver and pay over the ſaid Monies ſo remaining in their hands, to the ſucceeding Church-wardens, to and for the Charitable uſe before mentioned: And foraſmuch as it appeareth unto the ſaid Commiſſioners, that the ſaid *T. H.* the Grand-child hath in his cuſtody an ancient Deed or Writing, whereby the ſaid Meſſuages or Tenements, and Premiſſes were conveyed to the ſaid *A. B.* and his Heirs, and likewiſe the Original Will of the ſaid *A. B.* whereby the Premiſes are demiſed, limited, appointed, or aſſigned to and for the Charitable uſe before mentioned: The ſaid Commiſſioners do further order, adjudge and decree, that the ſaid *T. H.* ſhall within one month after notice of this Decree, deliver unto the Church-wardens of *T.* aforeſaid for the time being, the ſaid

Deed and Will, and all other Deeds, Evidences, and Writings touching and concerning the ſaid Meſſuages, Tenements, and Premiſſes, or any of them, which now are, or have been in his hands or cuſtody, or in the hands or cuſtody of any other perſon or perſons, to his uſe, or by his conſent or delivery, at any time, ſithence the death of the ſaid *E. H.* And laſtly, the ſaid Commiſſioners do further order, adjudge, and decree, that the ſaid *T. H.* the Grand-child, ſhall within one month next after notice of this Decree, pay unto the Church-wardens of the ſaid Pariſh-Church of *T.* for the time being, the ſum of 20 l. of lawful money of *England*, for the Rents and Profits of the ſaid Meſſuages, Tenements, and Premiſes by him received ſince the death of his ſaid Father *E. H.* Which the ſaid Church-wardens are to imploy and beſtow in and about the repair of the ſaid Pariſh-Church, as need and occaſion ſhall be and require. In witneſs whereof, the Commiſſioners aforeſaid, have hereunto ſet their Hands and Seals, the day and year above-written.

Eſſex.

III.

Eſſex. AT *L. S.* in the County of *E.* aforeſaid, the laſt day of *M.* in the year of our Lord Chriſt 1659. Whereas by an Inquiſition taken at *L. S.* aforeſaid, the 24. day of this inſtant *M.* before *W. C.* Serjeant at Law, *R.S.* Eſquire, *&c.* By vertue of a Commiſſion under the Great Seal of *England*, to them and others directed, for the due execution of a Statute made in the High Court of Parliament, holden the 27 day of *O.* in the 43. year of the Reign of the late Queen *E.* Intituled an Act to redreſs the miſ-imployments of Lands, Goods, and Stocks of money heretofore given to charitable uſes, by the Oaths of *J. A.* Gent. *R. B.* Eſquire, *&c.* honeſt and lawful men of the County aforeſaid: It is found, and doth appear, that *M. W.* Widow deceaſed, long before her death, did hold to her and her Heirs of the then Lady of the Mannor of *W.* in the ſaid County of *E.* by Copy of Court-Roll, according to the Cuſtom of the ſaid Mannor, all that Tenement, *&c.* as by the ſaid Inquiſition hereunto annexed may appear. Now we the ſaid *W. C. R. S. &c.* Having firſt called the ſaid *R. B.* being the party

party intereſſed in the Tenement and Premiſes in the ſaid Inquiſition mentioned (who appeared before us by her Councel, before the taking of the ſaid Inquiſition, and was fully heard touching the Premiſes) and having examined and conſidered the matters and things in and by the ſaid Inquiſition found, and thereby appearing, do (by vertue of the ſaid Statute and Commiſſion, and the Power and Authority to us thereby given) Order, Adjudge, and Decree, that the ſaid *R. B.* her Executors and Adminiſtrators, ſhall within one month next after notice of this Decree, Order, and Judgment, pay unto the Church-wardens of the ſaid Pariſh of *W.* for the time being, the ſum of 20 l. of lawful money of *England*, for the Arrerages of the ſaid yearly payment of 30 l. *per annum*, ſo by her with-held and detained from the charitable uſe aforeſaid, to and for the relief of the poor people of *W.* aforeſaid: And alſo the ſum of 10 l. more for damages for the detaining of the ſaid mony, and for the Coſts and Charges of the Pariſhioners of *W.* aforeſaid by them expended, and by the ſuing forth of the Commiſſion aforeſaid and in the proſecution thereof: And in and about the obtaining of the ſaid Inquiſition, and this Decree. And we the ſaid *W. C. R. S. &c.* do further Order, Adjudge, and Decree, that the

ſaid

ſaid *R. B.* her Heirs and Aſſigns, Owners, and Proprietors of the Tenement and Premiſſes aforeſaid, and all and every other perſon and perſons whatſoever, claiming, by, from, or under the ſaid *M. W.* and *D. B.* deceaſed, or either of them, ſhall (from henceforth for ever hereafter out of the Rents, Iſſues, and Profits of the ſaid Tenements and Premiſſes yearly, and every year) pay unto the Church-wardens of the Pariſh of *W.* aforeſaid for the time, and from time to time being, the ſum of thirty pounds, of lawful money of *England*, upon the Feaſt of the *Epiphany*, in every year, yearly for ever, to and for the relief of the poor of *W.* aforeſaid, according to the true direction, appointment, intent, and meaning of the ſaid *M. G.* the Donor thereof. *In witneſs whereof*, &c.

IV.

Eſſex. AT *E.* in the ſaid County, upon the 20th day of *November*, in the 14. year of the Reign of our Soveraign Lord *Charls*, by the Grace of God King of *England Scotland*, *France*, and *Ireland*, Defender of the Faith, *&c.* Whereas by an Inquiſition indented, taken at *E.* aforeſaid, the 21. day of *Septemb.* laſt paſt, before *Thomas Winniff* Dean of St. *Pauls* Church *London* &c. By vertue of his Majeſties Commiſſion under the Great Seal of *England*, bearing Date the 6th Day of *March*, in the 13th year of his ſaid Highneſs Reign, directed to the Right Reverend Father in God, the Lord Biſhop of *London*, &c. Authorizing them, or any four or more of them, for enquiring and reformation of Deceits and Breaches of Truſt, concerning Lands, Tenements, and other things given, limited, and appointed, to any the Charitable Uſes, named in the ſaid Commiſſion within the ſaid County according to a Statute of the 43. year of the Reign of the late Q. *Elizabeth*, in ſuch Caſes made and provided by the Oaths, &c. It was found, that *H. L.* late of *W.* in the ſaid County of *Eſſex*, deceaſed, did in his life-time (amongſt other things)

things) purchaſe of one *N.S.* a certain Cuſtomary Meſſuage or Tenement, with the Appurtenances in *W.* aforeſaid, late in the Tenure or Occupation of one *J. E.* Gent. and holden of the Lord of the ſaid Mannor by Copy of Court-Roll, according to the Cuſtom of the ſaid Mannor. And he the ſaid *H. L.* took ſurrender thereof in the names of his Sons, *H. L.* and *J. L.* being then Infants of tender years; and afterwards, during his life, did take and receive the Rents, Iſſues, and profits of the ſaid Meſſuage or Tenement, with the Appurtenances, to his own proper uſe and behoof: And that the ſaid *H. L.* having purchaſed the ſaid Meſſuage or Tenement, with the Appurtenances (amongſt other things) as aforeſaid, he the ſaid *H. L.* did make his laſt Will and Teſtament in Writing, bearing Date the 28. Day of *November*, 1619. And by the ſame his laſt Will and Teſtament, did limit and appoint one yearly Rent of 40 *s.* to be iſſuing and payable yearly for ever, out of the Meſſuage or Tenement in *W.* aforeſaid, then in the Tenure of the ſaid *M. S.* or his Aſſigns, to be diſtributed amongſt the poor people of the Pariſh of *W.* aforeſaid, from time to time aforeſaid for ever, in manner and form following, *viz. Item*, I give and bequeath unto *W. M.* Kt: *J. W.* Clerk, the now Parſon of *W.* *H. H.* Merchant,

chant, *J.W.* Gent. and *E. P.* Merchant, and their Heirs for ever, for the relief of the Poor of the ſaid Pariſh, one yearly Rent of 40 *s.* to be iſſuing & payable yearly for ever, out of my Meſſuage or Tenement in *W.* with the Appurtenances, now in the Tenure of *M. S.* or his Aſſigns, to be paid at the Feaſt of the Birth of our Lord God in every year, and to be diſtributed to and amongſt the poor people of the Pariſh of *W.* from time to time for ever, by diſcretion of the chief Inhabitants, and the Parſon, and the Church-Wardens of the ſaid Pariſh for the time being for ever. And if it ſhall happen the ſaid Rent, or any part thereof to be behind or unpaid at the ſaid Feaſt, that then it ſhall be lawful for the ſaid *W. M. J.W. H.H. J.W.* and *E. P.* their Heirs or Aſſigns, to enter into the ſaid Meſſuage, diſtrain for the ſame, and for the Arrearages thereof, if any ſhall be behind and unpaid. And whereas it was further found by the ſaid *Inquiſition* that the ſaid *H. L.* in or about the Moneth of *Jan.* in the ſaid year of our Lord God, 1619. died: And that the ſaid *H. L.* his Son died alſo in the life-time of him the ſaid *H.* And that the ſaid *J. L.* now Sir *J. L.* Kt. them ſurvived, and being ſeized of the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things, the ſaid Sr *W. M.* Kt. in the ſaid Will named, being one of the Deviſees

of

of the ſaid Rent, and truſted by the ſaid Will, to ſee the ſaid *Charitable Uſe* performed, and having notice of the ſaid *Charitable Uſe*, did, in or about the Month of *Nov.* in the year of our Lord God, 1633. purchaſe the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things, of the ſaid Sir *J. L.* and that thereupon the ſaid Sir *J. L.* in or about the month of *No.* in the ſaid year, 1633. did ſurrender the ſaid Meſſuage or Tenement, amongſt other things, into the hands of the Lord of the ſaid Mannor of *W.* to the uſe of the ſaid *W. M.* Kt his Heirs and Aſſigns for ever; And that the ſaid Sir *W. M.* at a Court holden for the ſaid Mannor the 10. Day of *Dec.* in the year of our Lord God, 1633. was admitted Tenant to the ſaid Meſſuage or Tenement, with the Appurtenances accordingly. And that the ſaid *W. M.* Kt. continued ſeized of the ſaid Meſſuage or Tenement, amongſt other things, untill about the month of *June* laſt; at which time, he the ſaid *W. M.* for a valuable conſideration of money, did ſurrender the ſaid Meſſuage or Tenement, with the Appurtenances, amongſt other things, into the hands of the Lord of the ſaid Mannor of *W.* to the uſe of *H. P.* Eſq; his Heirs and Aſſigns for ever, according to the cuſtom of the ſaid Manno ; And that the ſaid *H. P.* at a Court holden for the ſaid Mannor, on or about the

the 21. Day of *June* last, was admitted Tenant to the said Messuage or Tenement, with the Appurtenances, amongst other things accordingly: And that before the time that he the said *H. P.* was admitted Tenant to the same, as aforesaid, he having the Sum of 1000 *l.* or more of the said purchase money remaining in his hands unpaid, had notice of the said *Devise* and *Charitable Use*. And lastly, that the said yearly Rent of 40 *s.* nor any part thereof, hath not been as yet at any time distributed unto and among the poor people of the Parish of *W.* aforesaid, according to the Will of the said Sir *H. L.* but hath remained in Arrear and unpaid to the Parishioners, by the Occupyers of the said Land, ever since the death of the said Sir *H. L. viz.* for the space of these 18. years last past, contrary to the true intent and meaning of the said Will, as by the said *Inquisition* hereunto annexed, more at large it doth and may appear. Now the said *T. W. E. L. N. W. J. H. W. C. D. D.* and *D. T.* for reformation of the said abuse, neglect and breach of Trust, do hereby Order, Adjudge, and Decree, in manner and form following; *that is to say*, That he the said *H. P.* now Owner of the said Messuage or Tenement, and Land charged with the said Rent, his Heirs, Executors, Administrators, and Assigns, shall pay, or cause to be paid unto the said

ſaid *J. W.* and the now Church-Wardens of the ſaid Pariſh of *W.* or one of them, the Sum of 38 *l.* of lawful money of *England*, within 8 days after *Proceſs* ſhall be ſerved upon the ſaid *H. P.* his Heirs, Executors, Adminiſtrators, and Aſſigns, at or in the Parſonage houſe of *W.* aforeſaid, for the Arrearages of the ſaid yearly Rent or Sum of 40 *s.* limited and appointed by the ſaid Sir *H. L.* in and by his ſaid Will, to be iſſuing and paid out of the ſaid Meſſuage or Tenement, with the Appurtenances, to the *charitable uſe* above expreſſed: And that the ſaid Sum of 38 *l.* ſhall be diſtributed by them the ſaid *J. W.* and the ſaid Church-Wardens of the ſame Pariſh, unto and amongſt the poor people of *W.* aforeſaid, according to the Will of the ſaid Sir *H. L.* And that the ſaid *H. P.* his Heirs, Executors, Adminiſtrators, and Aſſigns, ſhall alſo pay unto them the ſaid *J. W.* and the ſaid Church-Wardens of *W.* the Sum of 10 *l.* of lawful money of *England*, towards the charges laid out in the ſuing forth of the ſaid Commiſſion, and in proſecuting of the ſaid *Inquiſition*, and this *Decree*. And the ſaid *T. W.* &c. do further Order, Adjudge, and Decree, that the ſaid Sir *W. M.* Kt. and *J. W.* being the ſurviving *Deviſees* of the ſaid Rent of 40 *s. per annum*, limited and appointed, to be paid out of the ſaid Meſſuage or Tenement, to and for the

charitable uſe above mentioned, ſhall at, or before the ſaid Feaſt of the *Annunciation* of our Bleſſed Lady the Virgin *Mary* next enſuing, by their Deed or Writing, in due form of Law to be made, grant, convey, aſſign, or ſet over the ſaid yearly Rent of 40 *s.* limited and appointed by the ſaid Will of the ſaid Sir *H. L.* to be for ever paid out of the ſaid Meſſuage or Tenement, with the Appurtenances in *W.* aforeſaid, to and for the *charitable uſe* before expreſſed, unto Sir *H. H.* Kt. *W. J.* Dr. in Divinity, Rector of the Pariſh-Church of *W.* aforeſaid, *B. W. W. B. T. M.* and *D. T.* Eſquires, their Heirs and Aſſigns, in as large, ample, and beneficial manner and form, to all intents and purpoſes whatſoever, as the ſame is granted, demiſed, or bequeathed unto them the ſaid Sir *W. M.* Kt. *J. W.* Clerk, *H. H. I. W.* and *E. P.* and their Heirs, in and by the Will of the ſaid Sir *H. L.* To the end, intent, and purpoſe, the ſaid Sir *H. H. W. I. B. W. W. B.* and *D. T.* their Heirs and Aſſigns, may be enabled to demand and receive the ſaid yearly Rent of 40 *s.* of and from the Owners and Occupyers of the ſaid Meſſuage or Tenement for ever, at the Feaſt of the Birth of our Lord God. And that the ſame may be diſtributed unto and amongſt the poor people of the ſaid Pariſh of *W.* aforeſaid, from time to time for ever, by the diſcretions of the

ſaid

ſaid chief Inhabitants and the Parſon, and the Church-Wardens of the ſaid Pariſh for the time being for ever, where moſt need ſhall be, according to the true intent and meaning of the ſaid Sir *H.L.* in his ſaid Will expreſſed. And the ſaid *T.W. E.L. N.W. I.H. W.C. D.D.* and *D.T.* do further Order, Adjudge, and Decree, that as ſoon as any 4 of them, the ſaid Sir *H. H. W. I. B.W. W. B. T. M.* and *D. T.* ſhall depart this life, that then the ſaid two ſurviving Aſſignes of the ſaid yearly Rent of 40 *s.* ſhall by ſome Writing under their Hands and Seals, in due form of Law to be made, aſſign and ſet over the ſaid yearly Rent of 40 *s.* limited and appointed by the ſaid Sir *H. L.* to and for the *Charitable Uſe* above mentioned, unto two other perſons by them the ſaid ſurviving Aſſigns to be nominated and their Heirs, upon condition, that they the ſaid two perſons ſo to be nominated by them the ſaid ſurviving Aſſigns, as aforeſaid, immediately after the ſaid Rent ſhall by ſuch Act and Deed be veſted and ſetled in them, ſhall re-aſſign and ſet over the ſaid yearly Rent of 40 *s.* unto them the ſaid ſurviving Aſſigns: And alſo to four or more other perſons of the beſt quality then living in *W.* aforeſaid, their Heirs and Aſſigns for ever in Truſt, to and for the performance of the *Charitable Uſe* above mentioned; And that from time

to time, as often as any four of the Aſſigns of the ſaid Rent ſhall depart this life, that then the ſurviving Aſſigns of the ſaid Rent, ſhall make ſuch new Aſſignments of the ſaid yearly Rent of 40 *s.* as are above expreſſed and mentioned. In Witneſs, &c.

The certain and ſure way of making Decrees, is ſtrictly to obſerve and purſue the Will and Intent of the Donor.

The return of the Commiſſion to be written upon the back thereof.

The Execution of this Commiſſion appeareth in ſeveral Schedules to the ſame Commiſſion annexed.

Four Commiſſioners, or more;

A. B.
C. D.
E. F.
G. H.

Exceptions

Exceptions to a Decree.

EXceptions taken by T. H. *Gent. to a Decree made at* R. *in the County of* D. *on Tueſday the Ninth day of* September, *in the Year of our Lord,* 1645 *made by* W. C. J. H. C. M. *and* G. M. *Commiſſioners, appointed and authorized by a Commiſſion under the Great Seal of* England, *bearing date the eighth day of* February, 1643, *directed to the ſaid Commiſſioners, and to divers other perſons in the County of* D. *grounded upon the Statute made in the three and fourtieth year of the Reign of the late Queen* Elizabeth, *Intituled,* An Act made to redreſs miſ-imployments of Lands, Goods, and Stocks of Money given to Charitable Uſes, *as followeth.*

WHereas it is ſet forth by the ſaid Decree, That one *A. B.* by his Will in Writing, bearing date the 17. day of *January,* 1524. did Deviſe and Bequeath a Meſſuage or Tenement, with certain Houſes, and a Garden thereunto belonging, with the

Appurtenances, in *T.* in the ſaid County of *D.* commonly called or known by the name of *C.* to *A.* his Wife, during her life; and after her deceaſe, unto the Church of *T.* aforeſaid, in theſe words following: *Item*, I Will, after my deceaſe, that *A.* my wife, have my Houſe, called *C.* during her natural life, and ſhe to keep up the reparations of the ſaid Houſe, and the Lords Rent to pay, and ſhe to find four Tapers of four pound of Wax, that is, one before the Rude under the Rude loft, and another before our Lady; another before St. *Thomas*, and one before St. *Anthony*. *Item*, I Will, That ſhe keep mine *Obit* every year during her life, and to have every year three Prieſts, and they to have eight pence apiece, and two dozen of bread, and a kinderkin of double Beer, and two Cheeſes, price of twenty pence. *Item*, I Will, and appoint after my deceaſe, That all and ſingular my Evidences and my Copies, that they be delivered into the cuſtody of the Church-Wardens of the Pariſh of *Peter* and *Paul* of *T.* aforeſaid. *Item*, I Will, That after the natural life of *A.* my Wife, that then my Houſe, called *C.* with all the Appurtenances belonging thereunto, as is more plainly ſpecified by my Deeds, that it ſhall remain evermore unto the Church aforeſaid: Firſt, to keep mine *Obit* yearly, and the four Tapers of four pounds of Wax. Moreover, I Will,

Will, That after the deceaſe of *A.* my wife, that the Churchwardens do buy ſix pounds of Wax, and make the common light, and the Taper before the *Rude*, to the full of two pounds of Wax apiece, and ſo to continue for evermore, and the reſidue of the Rent to remain to the reparations of the Church aforeſaid. And whereas it is ſet forth by the ſaid Decree, That the ſaid *A.* and *B.* and *A. B.* are long ſince dead, and that *T. H.* Eſquire, deceaſed, on or about the ſix and twentieth day of *January*, in the thirtieth year of the Reign of the late Queen *Elizabeth*, did enter into the ſaid Meſſuage and Premiſſes, called *C.* and was poſſeſſed thereof, and during his life, took the Rents and profits thereof, paying only five Nobles *per ann.* out of the Rents and Profits of the ſame Meſſuage and Premiſſes to the Church-Wardens and Church of *T.* to the charitable uſe aforeſaid; and that *E. H.* Eſquire, deceaſed, ſon of the ſaid *T.* alſo entred upon the Premiſſes, and paid the five Nobles a year as aboveſaid, untill about twelve years laſt paſt, at which time the ſaid *E. H.* refuſed to pay it, and that the ſame Premiſſes is now divided into ſeveral Tenements, and that ſince the death of the ſaid *E. H.* who died about two years before the Decree; the ſaid Exceptant, *T. H.* Son and Heir of the ſaid

E. H. came to the ſaid Meſſuage and Premiſſes called *C.* as Son and Heir to the ſaid *E. H.* And the ſaid Commiſſioners have ordered, That the ſaid Exceptant, *T. H.* and his Tenants, ſhould ſurrender and yield up the Poſſeſſion of the ſaid Meſſuage and Premiſſes, unto the Church-Wardens of *T.* aforeſaid, and to deliver up the Deeds and Evidences of the ſame Premiſſes, and to pay unto the ſaid Church-wardens the ſum of twenty pounds, to be imployed for the repairs of the ſaid Church. Unto which Decree, this Exceptant, *T. H.* doth except, and conceives, and is adviſed by his Councel, That he is not, nor ought to be bound by the ſaid Decree and Order made by the ſaid Commiſſioners as aforeſaid, for the Cauſes and Reaſons hereafter following.

And firſt, For that it appeareth by an ancient Deed of Feoffment, bearing date the two and twentieth day of *June*, in the tenth year of the Reign of the late King *Henry* the eighth, that one *J. K.* and *J.* his wife, *W. F. W. T. J. S.* and *R. M.* did grant and confirm unto the before named *A. B. R. F. R. F.* and *J. R.* to the uſe of the ſaid *A. B.* and his Heirs and Aſſigns for ever, all that the Meſſuage, with the Buildings, Gardens, and Appurtenances, called *C.* ſcituate, lying and being in *T.* in the County of *D.* between,

tween &c. as by the ſaid Deed of Feoffment ready to be produced, may appear: Which ſaid laſt mentioned Meſſuage and Premiſſes, called *C.* is not the Meſſuage, Lands and Premiſſes in the occupation of this Exceptant and his Tenants, and which are charged and decreed to the charitable uſe by the ſaid Commiſſioners, as aforeſaid: For this Exceptant ſaith, That the aforeſaid Meſſuage or Tenement, called *C.* ſo conveyed by the laſt mentioned Deed of Feoffment to *A.B.* as aforeſaid, was held of the Manor of *G.* in the ſaid County of *D.* by Fealty, Suit of Court, and the yearly Rent of two ſhillings eight pence *per ann.* as by the Surveys and Records of the ſaid Mannor may appear; which ſaid Meſſuage and Premiſſes afterwards came to be the Inheritance of one *R. E.* and was then called by the name of *C.* otherwiſe *E.* Hall. And this Exceptant further ſaith, That the ſaid *R. E.* being ſeized in Fee of the ſaid Meſſuage and Premiſſes, did upon or about the twelfth day of *November*, in the eighth year of the Reign of the late Queen *Elizabeth*, acknowledg a Statute of one hundred and fifty pounds unto one *T. O.* for the payment of the ſum of one hundred and ſixteen pounds at a day ſhortly after, which was not paid; which Statute was extended about the tenth day of *April*, in the four-

teenth

teenth year of the Reign of the ſaid late Queen *Elizabeth*, upon the ſaid Meſſuage and Premiſſes, which was afterwards aſſigned over unto *T. H.* this Exceptant's Grandfather, upon or about the five and twentieth day of *January*, in the 14th year of the Reign of the ſaid late Queen *Elizabeth*. And it appeareth by the ſaid Extent, that the ſaid *R. E.* had ſold the ſaid Meſſuage and Premiſſes, unto one *S. F.* and his Heirs by Deed, bearing date upon or about the twentieth day of *June*, in the twentieth year of the Reign of the ſaid late Queen *Elizabeth*: And this Exceptant ſaith, That the ſaid *T. H.* this Exceptant's Grandfather, having the ſaid Premiſſes ſo in Extent, and the ſame being but of ſmall value, and the money that was owing thereupon being more worth then the ſaid Meſſuage and Premiſſes, he did by his Deed, bearing date upon or about the five and twentieth day of *January*, in the thirteenth year of the Reign of the late Queen *Elizabeth*, grant to ſeveral Truſtees, one Annuity or yearly Rent of fourty ſix ſhillings eight pence to be iſſuing and going out of the ſaid Meſſuage, called *C.* to be imployed for the repairs of the Pariſh Church of *T.* aforeſaid, which ſaid ſum of fourty ſix ſhillings and eight pence is the ſeven Nobles mentioned in the ſaid Decree. And this Exceptant ſaith, That when the ſaid Extent

is

is ended, the Inheritance of the ſaid Meſſuage and Premiſſes will come unto *T. F.* Son and Heir of *S. F.* deceaſed, as by an Office after the deceaſe of the ſaid *S. F.* found at *L.* the three and twentieth day of *November*, in the four and fourtieth year of the Reign of the late Queen *Elizabeth* may appear: which ſaid Meſſuage and Premiſſes laſt before mentioned, if any at all, ought only to be charged with the ſaid charitable Uſe, and none other.

The ſecond Exception.

And ſecondly, this Exceptant ſaith, That the Meſſuage and Premiſſes in the Decree mentioned to be in this Exceptant's occupation, and the other Meſſuages and Premiſſes therein mentioned to be in the occupation of him, this Exceptant and his Tenants, are not the Meſſuages and Lands given to the ſaid Charitable Uſe, nor ought nor to be charged therewith; for this Exceptant ſaith, That the late King *Edward* the ſixth, by his Letters Patents under the Great Seal of *England*, bearing date the tenth day of *April*, in the third year of his Reign, did amongſt other things, give and grant unto one *R. W.* and *W. P.* and their Heirs, all that his Meſſuage or Tenement called *C.* and all Lands, Meadows, Paſtures, Feedings

and

and Hereditaments whatsoever thereunto belonging, then or late in the occupation of *N. P.* to hold of the said King as of his Mannor of *C.* in the County of *D.* in Fee-socage, and not in *Capite*, for all Rents, Services, and Demands whatsoever. And this Exceptant saith, That the said Messuage, called *C. alias E.* Hall, charged and given to the said charitable use, is held of the said Mannor of *G.* by Fealty, Suit of Court, and the yearly Rent of two shillings and eight pence, as is herein before mentioned, and therefore the same is differenced and plainly distinguished from the said Messuage and Premisses, called *C.* in the possession of this Exceptant and his Tenants. And this Exceptant further saith, That afterwards, that is to say, the nine and twentieth day of *April*, in the third year of the Reign of the said late King *Edward* the sixth, the said *R.W.* and *W.P.* did by Deed of Feoffment, and by other good Conveyances and Assurance in the Law, convey and assure the aforesaid last mentioned Messuage, called *C.* (amongst other things) to *W. C.* and *J.W.* and their Heirs, and afterwards *G. C.* Son and Heir of the said *W. C.* who had the said last mentioned Messuage, called *C.* by Survivorship, did by his Indenture of Bargain and Saled, inrolled in *Chancery*, dated the thirteenth day of *October*, in the twelfth year of

of the late Queen *Elizabeth*, bargain and ſell the ſaid laſt mentioned Meſſuage, called *C.* amongſt other things, to *W. L.* and his Heirs, and afterwards the ſaid *W.* did by his Deed indented, inrolled in *Chancery*, dated the tenth of *July*, in the thirteenth year of the Reign of the late *Queen Elizabeth*, convey and aſſure the ſaid laſt mentioned Meſſuage, called *C.* unto *T. H.* and his Heirs, which ſaid *T. H.* was Grandfather of this Exceptant, and the ſame is by deſcent, and other good Conveyance and Aſſurance in the Law, lawfully veſted and come unto this Exceptant, and he now is lawfully ſeiſed thereof, and ought to hold and enjoy the ſame, free from the ſaid charitable uſe.

The third Exception.

And thirdly, This Exceptant ſaith, that the ſaid *T. H.* his Grand-father, at the time of his purchaſe of the ſaid laſt mentioned Meſſuage called *C.* had no notice of the ſaid charitable uſe, and if the ſaid Meſſuage were charged, or chargeable therewith, or liable thereunto, as in truth it is not, yet ought the ſame not to be charged therewith; For that by the ſaid Statute made in the 43. year of the Reign of the late Queen *Elizabeth*, made for charitable uſes, it is provided

ded and ordained, that no Lands, Tenements, or Hereditaments given or appointed to any charitable uſes, ſhall be impeached by any Decrees or Orders of Commiſſioners for charitable uſes, the Purchaſers having no notice of the ſaid charitable uſes.

The fourth Exception.

And fourthly, This Exceptant ſaith, that if it were true, as in truth it is not, That the ſaid laſt mentioned Meſſuages, called *C.* were charged, or chargeable with the ſaid charitable uſe, yet ought not the ſaid Order or Decree made by the ſaid Commiſſioners any wayes to impeach or charge the ſaid Meſſuage or Premiſes, with the ſaid charitable uſe, or any ways to deprive this Exceptant thereof; For that by the ſaid Statute, made in the 43. year of the Reign of the ſaid late Queen *Elizabeth*. It is Enacted, That the ſaid Act for charitable uſes, ſhall not extend to give Power and Authority to any Commiſſioners for charitable uſes, to make any Order, Judgment, or Decrees, for, or concerning any Mannors, Lands, Tenements, or other Hereditaments, Aſſured, Conveyed, Granted, or come unto the Queens Majeſty, the late King *Henry* the 8th, King *Edward* the 6th, or Queen *Mary*,

Mary, by Act of Parliament, Surrender, Exchange, Relinquishment, Escheat, Attainder, Conveyance, or otherwise. And forasmuch as it appeareth, that the said Messuage and Premises last before mentioned, called C. was by the said late King *Edward* the 6th, by his Letters Patents, dated the 8th day of *April*, in the 3d year of his Reign, granted (amongst other things) unto the said *R.W.* and *W. P.* and their Heirs, as is herein before mentioned: And therefore, if the same had been any ways given to the said charitable use, as in truth it was not, yet ought the same now to be free from the same, by force and vertue of the said Act of Parliament.

The fifth Exception.

And fifthly, This Exceptant saith, That the said Commission grounded upon the said Statute to the said Commissioners directed, in pursuance whereof they made their Decree, is not returned into this Honourable Court, into the Office of the *Petty-bag*, as it ought to be; for all which Causes, this Exceptant doth humbly pray the said Order and Decree may be reversed and made void, and his said Messuage and Premises may be freed from the same; And that this Exceptant

ceptant may be dismissed with his reasonable Costs and Charges in this behalf wrongfully sustained.

Answers to Exceptions.

The Answer of J. L. *and* S. W. *Church-wardens of* G. T. *in the County of* D. *Respondants to the Exceptions of* T. H. *Gent. by him taken, to the Decree in the said Exceptions mentioned.*

WHereas the said Exceptant doth except to and against the said Decree, for that the Messuage or Tenement, called *C.* given by the Will of *A.B.* therein named, to the charitable use therein specified, are not the Messuage, Tenement and Lands in the Occupation of the said Exceptant and his Tenants, and which are charged and Decreed to the said charitable use: And also for that the Exceptants Grandfather *T. H.* therein named, had at the time of his Purchase of the Premises, in the occupation of him and his Tenants, no notice of the said charitable use; and that the said premises were heretofore

heretofore conveyed by Letters patents from King *Edward* the ſixth: And laſtly, for that the Commiſſion directed to the Commiſſioners in the ſaid Decree named, wherein they made the ſaid Decree, was not returned into this Court, at the time of the ſaid Exception, unto which Exceptions, theſe *Reſpondents* ſaving unto themſelves all advantages of Exception to the incertainties and inſufficiencies thereof, ſay, That they are upon the matter, ſtrangers to the matters ſet forth by the ſaid Exceptions, having not lived very long in the pariſh, and being no otherwiſe concerned then as Church-wardens thereof; and it cannot be preſumed, they ſhould know the facts and titles alledged by the ſaid Exceptions of their own knowledge. But they ſay, that the ſaid Exceptant was ſeveral times ſummoned and heard before the Commiſſioners that made the ſaid Decree, and the Jury by them impanneled; And he brought his Learned Counſel with him, who urged before the ſaid Jury and Commiſſioners, who were learned in the Law, and good and honeſt men, before their Verdict given, or Decree made, the ſubſtance and matter of the ſaid Exception, and what ever could be alledged againſt the decreeing of the Premiſes, and the ſame Decree was made upon a full hearing of both ſides. And one of the main

points insisted on before the said Jury and Commissioners, was the matter of the aforesaid first two Exceptions, whether the Premises decreed to be charged with the charitable use, were the Messuage, Tenement, and Lands given by the said Will, yea or no, it being a proper issue for a Jury of parcel, or no parcel, the same Premises in the occupation of the Exceptant, were after a full and deliberate hearing and evidence on both sides found by the said Jury to be the same Tenements and Lands, devised by the said Will. And the matter of the said two next Exceptions, Whether the said Exceptants Grandfather had notice of the charitable use before, or at his Purchase of the Premises, or that the Premises were in the *Crown*, yea, or no, being also proper for a Jury, were likewise upon the like Evidence then given, found by the said Jury for the said Parish against the said Exceptant. And these *Respondents* verily believe, the said Exceptant cannot but be satisfied with the said Verdict and Decree, and doth trouble these *Respondents* and the said Parish, onely to drive them to some composition or low terms of agreement: And in particular these *Respondents* say, that they doubt not to make it appear by several particulars, and parcels of Evidences and Pleadings, and proofs in several Courts, (if this Honourable Court should

ſhould now think fit to put them thereunto after the ſaid Deliberation and Verdict) that the Premiſes charged with the ſaid charitable uſe, are the ſame that were charged and deviſed by the ſaid Will, and that the Purchaſer (if he was one) had and could not but have and take notice before, and at the time of his Purchaſe: And likewiſe ſay, that the ſaid King *Edward* the ſixth, or his Father, *Henry* the 8th, Queen *Mary*, or Queen *Elizabeth*, or either of them, were not at any time ſeiſed, or intituled to be ſeiſed of the Premiſes, or any part thereof; and if the ſaid King *Edward* the ſixth, made ſuch Grant as aforeſaid, the ſame was not of theſe ſelf-ſame Premiſes, but of other Tenements; and if it were, the ſaid King had no Seiſin, or Inheritance of, or in the ſaid Lands, or right ſo to grant the ſame, nor doth the ſaid Grant, if any ſuch be, prejudice the charitable uſe, as the *Reſpondents* are adviſed. And theſe *Reſpondents* further ſay, that they are informed, the ſaid Commiſſion is returned into this Court, and there remains of Record: Wherefore theſe *Reſpondents* humbly pray the ſaid Decree may ſtand ratified and confirmed, and the ſaid Decree and charitable Uſe may be performed, and theſe *Reſpondents* diſcharged with their Coſts in this behalf moſt wrongfully ſuſtained.

Decrees.

Southhampton ss AT S. *in the County of* S. *the* 10th *day of* D. *in the* 14th *year of the Reign of our Soveraign Lord* Charles *the Second, by the Grace of God, King of* England, Scotland, France *and* Ireland, *Defendor of the Faith, &c. Anno Dom.* 1662.

WHereas by an Inquiſition taken at *B.* in the ſaid County of *S.* the 21 day of *November* laſt paſt, before *G.J. P.R. W.R. J.W.* Eſquires, by vertue of a Commiſſion under the Great Seal, bearing date the 3d day of *N.* laſt paſt, to them and others, or to any 4. or more of them, directed for the due execution of the Statute made in the 43. year of the late Queen *Elizabeth*, Entituled, An Act to redreſs the miſimployment of Lands, Goods, and Stocks of money, heretofore given to charitable uſes, by the Oaths of *L.H. B.J. K.C. A.R. B.J. A.T. W. H.*

W.H. W.T. J.T. L.G. B.W. B.H. W.L. C.N. L.W. and *T.W.* good and lawful men of the ſaid County of *S.* It is found, that *F.J.* late of *B.* in the Pariſh of *S.* in the County of *H.* Widow, deceaſed, was in her life-time ſeiſed (amongſt other things) in Fee of, and in a certain portion of Tithes in *B.* in the ſaid County of *S.* in &c. And that the ſaid *F.* being ſo thereof ſeiſed, did make her laſt Will and Teſtament in Writing, bearing date the 22th day of *A.* in the year of our Lord God, 1567. And did thereby give, deviſe, and bequeath unto *N. J.* late of &c. *J. N. S. R. L. J.* and *A. J.* then Inhabitants of the Town of *N.* in the County of *C.* and to their Heirs and Aſſigns for ever. The ſaid portion of Tithes, amongſt other things, by the name of all that the Tithes of *B.* within the County of *S.* with all profits and Commodities, being part or parcel thereof, or unto the ſame belonging or appertaining, or with the ſame letten or occupied, then being in Leaſe for divers years then to come; whereupon the Rent of &c. by the year, was reſerved, and ſhould be paid during the ſaid Term, unto the ſaid Deviſees, their Heirs and Aſſigns, to the uſes and intents in the ſaid Will mentioned, That is to ſay, That they the ſaid *J.J. J.R.* and *J.* their Heirs and Aſſigns, ſhould yearly and for ever, imploy and beſtow the

yearly Rents, Iſſues, and Profits ariſing, coming, and growing by the ſame Tithes, and the Houſes in the ſaid Will mentioned, which then amounted to &c. *per annum*, to the erection, maintenance, and finding of a free Grammer-School within the ſaid Town of *N.* for ſuch a competent number of Scholars as ſhould be thought good to thoſe her Deviſees in truſt, or unto *D L.* then Maſter of *C.* Colledge in the Univerſity of *Oxon* and by them ſhould be ſet down in writing, under their Hands and Seals, the ſaid number of Scholars to be of the Children of the Inhabitants of the ſaid Town of *N.* *And* whereas it appears by the ſaid Inquiſition, that the ſaid portion of Tithes in *B.* afo eſaid, and the Houſes and Premiſes is the ſaid Inquiſition mentioned, were all of them given, appointed, and intended by the ſaid *F. J.* to and for the charitable uſes aforementioned, and for that it hath appeared unto the ſaid Commiſſioners by the ſaid Inquiſition aforeſaid, that the ſame Tithes now are, and for the ſpace of many years laſt paſt, have been of a very great yearly value, more then the Rent reſerved by the Feoffees of the ſaid School, upon the Leaſes thereof, over and above all Taxes, Charges, and Repriſes.

Now

Now We the ſaid *G. J. P. R. W. R. J.* and *L. S.* having called the parties intereſted in the ſaid Ty hes, and having heard and examined the Matters and Things in and by the ſaid Inquiſition found, and thereby appearing and being ſatisfied, that according to the true intention of the ſaid F. J. all the Rents and Profits of the ſaid Tythes, without fraud or diminu ion, ſhould be paid and diſpoſed to the ſaid Charitable Uſe, and that the ſaid Tythes ought to have been leaſed, at, or very near unto their true yearly Value, do by vertue of the ſaid Sta ute and Commiſſion, and the Power and Au hority thereby to us given, Order, Judge, and Decree, That the ſaid Concurrent Leaſe, or Leaſe in Reverſion, bea ing date on or about the 10 day of *A.* in the 20th of the ſaid l te King *Charles*, mac e by the ſaid *P. W. R. H. N. M.* and *S. J.* of the ſaid Portion of Tythes to the ſaid *N. E.* his Executors, Adminiſtrators and Aſſigns, for the term of, &c. afore mentioned, a the Rent of, &c. *per. ann.* w s alſo made and granted, contrary to the intent of the ſaid *F. J.* and was a miſgovernment of the ſame Tythes, and defrauding of the ſaid Charitable Uſes within the ſaid Statute. Therefo e We the ſaid *G. J. P. R. W. R.* and *J. W.* for reformation of the ſaid abuſes and breaches of Truſt, and to the end that the ſaid Rents, Iſſues, and Profits of the ſaid Tythes,

may be duly and faithfully imployed to, and for the Charitable Uſes aforeſaid, for which they were given limited, aſſigned, and appointed by the ſaid *F. J.* do further Order, Adjudge and Decree, That the ſame Leaſe and Term ſo made of the ſame Tythes to the ſaid *N. E.* as is aforeſaid, and the Aſſignment thereof ſo made by the ſaid *N. E.* to the ſaid *L R.* as aforeſaid, and all other mean Aſſignments of the ſame Leaſe are, and either of them is, and from henceforth ſhall be utterly void, and of none effect. And that the ſaid *L. R.* his Executors, Adminiſtrators and Aſſigns, ſhall within one Month, after Notice of this Decree, deliver the ſaid Leaſe and Aſſignment thereof to the Feeoffes which now, or hereafter ſhall be of the ſaid Tythes, ſhall and may Grant and Lett the ſame Tythes at the true yearly Value thereof. The ſame Leaſe thereof made to the ſaid *N. E.* as is aforeſaid, or the Aſſignment thereof notwithſtanding. And We the ſaid Commiſſioners do further Order, Adjudge and Decree, That the ſaid *L. R.* his Executors and Adminiſtrators, ſhall within one Month, next after Notice of this Decree, pay unto ſuch perſons as now are, or then ſhall be the Feoffees in Truſt of the ſaid Tythes, the ſum of, &c. of the Rents and Profits of the ſaid Tythes by him received from the Feaſt of St. *Michael* the Archangel in the ſaid Year, 1660, untill the

30th

30th day of *S.* 1662. over and above the Rent paid to the ſaid School, and all other Taxes, Charges and Repriſes. And that the ſame, according ſo ſuch Proportions as in the Will of the ſaid *F. J.* are expreſſed, ſhall be diſpoſed of, and diſtributed to ſuch Perſons, Intents and Purpoſes to whom it ought to have been paid, if the true yearly value of the ſaid propo. tion of Tythes for the time aforeſaid, had been duly received. And that the growing Rents, Iſſues, and Profits of the ſame Tythes, ſhall be for ever hereafter received by the Feoffees of the ſame Tythes, their Heirs and Aſſigns, and ſhall be by them laid out and diſpoſed of, in manner and form following, (That is to ſay), That, &c. thereof ſhall be paid *B. R. &c.* the Proſecutor of the ſaid Inquiſition and this Decree, for the Moneys laid out in and about the ſuing out of the ſaid Commiſſion and the proſecuting of the ſaid Inquiſition and this Decree. And moreover, That all the Rents, Iſſues, and Profits of the Premiſſes hereafter to be received by the Feoffees of the ſame portion of Tythes, their Heirs and Aſſigns, except the ſame ſum of &c. ſhall be for ever hereafter diſpoſed, paid, and imployed to the Schoolmen and Uſher, when there ſhould be one appointed of the ſaid School, and to the Maſter of the Colledge in *O.* for the time being; and in the Reparations of the ſaid School-Houſe, according to the proportions of the ſeveral Sums

of Money by the ſaid Will of the ſaid *F. J.* limited and appointed to the ſeveral perſons and purpoſes in her ſaid Will mentioned and intended. And in caſe the ſaid now Feoffees of the Premiſſes ſhall refuſe to perform this Decree on their parts, or ſhall be negligent in the performance thereof, Then, and in ſuch caſe, We the ſaid Commiſſioners, do Order, Adjudge, and Decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall upon demand, make a new Feoffment, or ſuch other Conveyances as by Council Learned ſhall be adviſed of all the ſaid portion of Tythes in *B.* aforeſaid, whereof they ſtand ſeized to the Charitable Uſes aforeſaid, unto *N. T. D. G. C. T. M. B. M. E. S. W.* and *D. J.* being honeſt and ſubſtantial Inhabitants of the ſaid Town of *N.* aforeſaid, and to their Heirs and Aſſigns for ever, to the uſe of them, and their Heirs and Aſſigns in truſt, to, and for the Uſes, Intents, and Purpoſes in the ſaid Will of the ſaid *F. J.* mentioned and expreſſed. And that the ſaid new Feoffees after the time they ſhall be lawfully eſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgment and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further Order, Adjudge, and Decree, That in every Leaſe hereafter to be made of the

of the ſaid Tythes and Premiſſes in *B.* in the County of *S.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall be reſerved the true yearly value thereof. And that the ſame ſhall be thereby made payable to the Feoffees, (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to, and for the Charitable Uſes in the Will of the ſaid *F. J.* mentioned and expreſſed, and ſhall be made by the ſaid Feoffees, as Feoffees in Truſt of the ſaid *F. J.* for the Charitable Uſes aforeſaid, and ſo to be expreſſed in the ſaid Leaſes; and that no Leaſe hereafter to be made of the Premiſſes, or of any part thereof, ſhall be made but in poſſeſſion, and not to exceed the number of 21 years from the making thereof. *In witneſs, &c.*

Decrees.

Lincoln. *AT* B. *in* L. *the* 10th *day of* N. *in the* 14th *year of the Reign of our Soveraign Lord* Charles *the Second, by the Grace of God, King of* England, Scotland, France, *and* Ireland, *Defendor of the Faith*, &c. *Anno Dom.* 1662.

WHereas by an Inquiſition indented, taken at *B.* aforeſaid, the 2d day of *Octob.* laſt paſt, before *W.B. C.D. E.F.* and *G.H.* Eſquires, by vertue of a Commiſſion under the Great Seal of *England*, bearing date the 11th day of *M.* in the ſaid 14th year of his ſaid Majeſties Reign, to them and others directed, for the due execution of the Statute made, in the 43. year of the Reign of the late Queen *Elizabeth*, Entituled, *An Act to redreſs the miſ-imployment of Lands, Goods, and Stocks of money heretofore given to charitable uſes, by the Oaths of* A.B. C.D. &c. *good and lawful men of the ſaid* B. *It was found*, &c.

&c. As in and by the ſaid Inquiſition hereunto annexed, it doth and may appear. And whereas the ſaid *B. G.* by his laſt Will and Teſtament in Writing, bearing date the 22th day of *Febr.* in the year of our Lord 1660. did demiſe unto his Wife *B. S.* all his Leaſe, Eſtate, and Term of years and Intereſt, which he had of, and in the ſaid Meſſuages and Tenements, Scituate in *L.* which he held by force of ſeveral Leaſes, granted by the Feoffees of the Grammar-School of *P.* in *L.* as by a Copy of the ſaid Will proved before us the Commiſſioners afore-named it doth and may appear. And foraſmuch as we are fully ſatisfied by the ſaid Will of the ſaid *B. G.* and by other proofs made before us, that the ſaid B. *G.* at the time of the taking of the ſaid Leaſe of 40 years, had notice of the charitable uſes aforeſaid. Now we *B. W. B. L. B. M. M. R. B. P. N. P. C. R.* being Commiſſioners and perſons nominated and authorized in and by the ſaid Commiſſion, having firſt called the preſent Feoffees of the Lands, Tenements, and Hereditaments aforeſaid, and the ſaid *B. S.* and *B. F.* in the ſaid Inquiſition named before us, and Oath being made, that they were ſerved to appear before us, and having heard *S.* and *F.* and their Councel, and having examined and conſidered of the matters and things in and by the ſaid Inquiſition

quiſition found, and the Will of the ſaid *B. G.* and being fully ſatisfied, that all the Rents and Profits of the ſame Premiſſes, are to be paid and diſpoſed to the ſaid charitable uſes aforementioned. And that the Houſes aforementioned, ought to have been Leaſed at the true yearly values thereof. Are of opinion, and do adjudge and decree, That the aforenamed Feoffees and Truſtees of the Lands, Tenements, and Hereditaments, given, limited, and appointed by the ſaid *F. J.* to the charitable uſes aforeſaid, who made the ſeveral Leaſes in the Inquiſition mentioned, have abuſed, and broken their truſt concerning the ſaid Houſes in *L.* aforeſaid, and have imployed the ſaid Houſes in *L.* aforeſaid, by granting the ſaid ſeveral long Leaſes thereof, at much leſſer values, then the ſame Houſes were reaſonably worth, to be let at the reſpective times of the making of the ſaid reſpective Leaſes thereof. And that the ſaid Leaſes and Occupiers of the ſaid Houſes, have miſ-imployed the ſame Houſes for the times which they have held and enjoyed the ſame, and received the Rents and Profits thereof, not paying the yearly values thereof to the charitable uſes aforeſaid: Therefore we the ſaid Commiſſioners, to wit, the ſaid *B.W. B.G. M.B. M.R. B.P.* and *H.N.* do Order, Adjudge and Decree, that the ſaid

ſeveral

ſeveral Leaſes, to wit, the ſaid Leaſes made to the ſaid *B. G.* for 40 years, in poſſeſſion, as is aforeſaid, the ſaid Leaſe ſo made to the ſaid *R. L.* for 40 years in poſſeſſion as is aforeſaid, and the ſaid Leaſe ſo made to the ſaid *W. J.* in Reverſion as is aforeſaid, and every of them are, and from henceforth ſhall be utterly fruſtrate and void to all intents and purpoſes, as if the ſame had never been made or granted. But for as much as it appeareth by the ſaid Inquiſition, That *B. G.* did heretofore lay out 150 l. upon the new building of the houſe and Premiſſes ſo to him Demiſed as is aforeſaid, and thereby advanced the yearly value thereof: And for that it alſo appeareth by the ſaid Inquiſition, That the ſaid Meſſuage and Premiſſes ſo demiſed to the ſaid *B. G.* as is aforeſaid, was worth 20 l. *per ann.* at the time of the making of the ſaid Leaſe above all Charges and Reprizes: And by the Teſtimony of Witneſſes ſworn before it was proved, that the ſame were of greater value; and there being no Covenant or Agreement in the ſaid Leaſe for the new building of the ſaid houſe; And for that it is now about 20 years ſithence the ſaid houſes were new built, and the ſame having been worth ever ſithence the building thereof above 28 l. *per ann.* above the ſaid Rent of 14 l. reſerved by the ſaid Leaſe thereof,

of; We the ſaid Commiſſioners are of Opinion, That the ſaid *B. G.* hath by the ſaid Overplus Rents been re-imburſed the ſaid ſum of 150 l. ſo by him laid out in the ſaid Building with an Overplus: And therefore we the ſaid Commiſſioners do further Order and Decree, That the Overplus Rents of the ſaid houſes already received, ſhall be allowed for the moneys laid out by the ſaid *B. G.* in the building thereof. And moreover, that the now Feoffees of the ſaid Premiſſes or the Survivor of them, ſhall make, ſeal, and execute a new Leaſe of the ſaid New-built houſes to the ſaid *B. S.* her Executors and Aſſigns for ſo many years of the ſaid terms of 40 years ſo granted to the ſaid *B. G.* as aforeſaid, as by effluction of time are not yet expired, at the true yearly value thereof. And that the Rent to be reſerved in and by the ſſaid Leaſe ſhall be made payable to the ſaid Feoffees, their Heirs and Aſſigns, to and for the *Charitable Uſes* in the Will of the ſaid *F. J.* mentioned, expreſſed, and declared; And to be paid at ſuch dayes and times as the Rent reſerved by the former Leaſe thereof are limited and appointed to be paid, and with ſuch Proviſoes, Covenants, and Agreements, as in the ſaid former Leaſe are compriſed and ſpecified. Provided alwayes, and the ſaid Commiſſioners do further

further Order and Decree, That if the aid *B.S.* ſhall not come in and ſubmit her ſelf to this preſent Order and Decree, and Surrender up the ſaid Old Leaſe of 40 years, by this Decree fruſtrated and declared void, and deſire to have the preferment to take ſuch new Leaſe within one moneth next after ſhe ſhall be ſerved with a Writ of Execution of this Decree, That then the ſaid *B. S.* and all clayming under her, or under the ſaid *B. G.* ſhall quit and yield up the poſſeſſion of the Premiſſes aforeſaid, to the Feoffees of the ſame Premiſſes. And that then the ſaid Feoffees ſhall grant a Leaſe of the ſame houſes to ſuch perſon or perſons as they ſhall think fit, in ſuch manner as is herein after mentioned. And we the ſaid Commiſſioners do further Order and Decree, the now Feoffees of the ſaid Houſes and Premiſſes, or the Survivors of them, ſhall alſo make, ſeal, and Execute a new Leaſe of the ſaid houſe and Premiſſes heretofore granted to the ſaid *L.R.* as aforeſaid, to the ſaid *B. F.* his Executors and Aſſigns, for ſo many years of the ſaid term of 40 years to the ſaid *L. R.* heretofore granted as aforeſaid, as by effluction of time are not yet expired, at the true yearly value thereof; The ſame being proved before Us to be worth 24 l. *per annum* to be Lett, or thereabouts: And

that the Rent to be reserved in and by the said Lease, shall be made payable to the said Feoffees, their Heirs and Assigns, to and for the Charitable Uses in the Will of the said *F. J.* mentioned, expressed, and declared, and at such dayes and times as the Rent reserved by the former Lease thereof are limited and appointed, and with Provisoes, Covenants, and Agreements, as in the said former Lease are comprized and specified. Provided alwayes, and the said Commissioners do further Order and Decree, That if the said *B. F.* shall not come in and submit himself to this present Order and Decree, and Surrender up the said Old Lease so made to the said *L. R.* for 40 years, and by this Decree frustrated and declared void, and desire to have the preferment to take such new Lease within one moneth next after he shall be served with a Writ of Execution of this Decree; That then the said *B. F.* and all claiming under him or under the said *L. R.* shall quit, deliver, and yield up the possession of the Premisses so Assigned unto him the said *L. R.* as is aforesaid, to the Feoffees of the same Premisses: And that then the said Feoffees shall grant a Lease of the same houses in such manner as is herein after mentioned: And in case the said now Feoffees of the

the premiſſes ſhall refuſe to perform the Decree on their parts, or ſhall be negligent in the performance thereof; Then and in ſuch caſe, We the ſaid Commiſſioners do Order, Adjudg, and Decree, That the ſaid now Feoffees of the Premiſſes, and the Survivors of them, ſhall upon Demand, make a new Feoffment, or ſuch other Conveyance, as by Councel Learned ſhall be adviſed, of all the ſaid Meſſuages and Premiſſes in *L.* aforeſaid, whereof they ſtand ſeiſed to the Charitable Uſes aforeſaid, unto *A. B. C. D. E.* &c. being Honeſt and ſubſtantiall Inhabitants of the ſaid Town of *T.* aforeſaid, and to their Heirs and Aſſigns for ever, To the uſe of them and their Heirs and Aſſigns in Truſt, to and for the Uſes, Intents and Purpoſes in the ſaid Will of the ſaid *F. J.* for that purpoſe mentioned and expreſſed: And that the ſaid new Feoffees after the time they ſhall be lawfully ſtated and inveſted in the Premiſſes, ſhall perform this preſent Order, Judgment, and Decree, according to the true intent and meaning thereof. And the ſaid Commiſſioners do further Order, Adjudg, and Decree, That in every Leaſe hereafter to be made of the ſaid houſes and premiſſes in *L.* aforeſaid, or any of them, by the Feoffees of the Premiſſes for the time being, there ſhall

be reſerved the true yearly value thereof, and that the ſame ſhall be thereby made payable to the Feoffees (ſo making the ſaid Leaſe) their Heirs and Aſſigns, to and for the Charitable Uſes in the Will of the ſaid *F. J.* mentioned and expreſſed in the ſaid Leaſes: And that no Leaſe hereafter to be made of the Premiſſes or any part thereof ſhall be made but in poſſeſſion, and not to exceed 21 years from the making thereof. And We the ſaid Commiſſioners do further Adjudg, and Decree, That the Rents, Iſſues, and Profits of the ſaid Houſes and Premiſſes, ſhall from henceforth be imployed in manner and form following; That is to ſay, Firſt, That the Proſecutor or Proſecutors of the ſaid Inquiſition and this Decree, ſhall be ſatisfied and paid out of the encreaſe of the Rents, Iſſues, and Profits of the ſaid houſes, the ſum of 30 l. for the moneys by him or them diſburſed in and about the proſecution of the ſaid Inquiſition, and this Decree. And moreover, That the Rents, Iſſues, and Profits of the ſame Premiſſes, (except the ſaid 30 l.) ſhall be for ever hereafter received by the Feoffees of the ſame Premiſſes, their Heirs and Aſſigns, and ſhall be laid out and diſpoſed of to the *S.* and *V.* of the ſaid *S.* and to the Maſter of *C.* Colledg in *O.* for the time

time being, and in the Repairs of the ſaid *S.* according to the proportions of the ſeverall Sums of Money by the ſaid Will of the ſaid *F. J.* limited and appointed to the ſeveral perſons and purpoſes in the ſaid Will limited and intended reſpectively. *In Witneſſe*, &c.

Certain Caſes adjudged upon Appeals, for the Illuſtration and Continuation of all that is ſaid in the whole Work.

CHAP. VI.

CASE 1.

Mich. 1626. *Windſor* and *Hilton.*

IN the Caſe between *Thomas Winſor* Plaintiff, and *Robert Hilton* and others, of the Town of *Farnham* Defendants, upon a Reference to the Judges out of the *Chancery* It was Reſolved by the Judges of the *Kings Bench*, That if upon an Appeal in *Chancery* or *Dutchy*, The Decree and Orders of the Commiſſioners for *Charitable Uſes* be confirmed, the

Bill of Review not be after the Order of Court.

the party grieved can have no Bill of Review, becauſe the Appeal is in the nature of a Bill of Review, and no Bill of Review doth lye after a Decree is confirmed upon a Bill of Review, for then it may be infinite vexation. But in ſuch a Caſe the party grieved may prefer his Petition in Parliament, and there have his complaint examined; And the Lords in Parliament may confirm, alter, or adnull the Decree, which is to be final; as it was reſolved by the Judges and the *Kings* Councel, Aſſiſtants in the Houſe of Peers, 20 *Caroli*, 1643. Between the Poor of *Eaſtham* in *Eſſex* Plaintiffs, and the Lady *Kemp* and others Defendants, where *Dandy*, one of the Alms-men of the Alms-houſe in *Eaſtham*, of the foundation of *Giles Breame* Eſquire, complained by Petition before the Lords in Parliament, to have a Decree made by the Lord *Coventry* adnulled, who by his Decree altered the Decree of the Commiſſioners, and the ſaid Defendants excepted that the ſaid Decree could not be adnulled without Bill in Parliament, for the reaſon aforeſaid, and upon reference to the ſaid Judges and Councel, they certi-

Relief in Parliament.

fied us aforesaid, and then the Lords proceeded to examine the said Lord Keepers Decree, and confirmed it.

CASE 2.

Mich. 44 *Eliz.*

E *Gerton*, *Popham*, and *Anderson*, and *Cook* Attorney General, resolved these Questions upon the said Statute:

1. That the *Bishop* of the *Dioceſs*, if there be any at the time of the sealing of the Commission, ought by the expreſs words of the said Statute, to be named a Commissioner, or otherwise the Commission is void: But if he be named a Commissioner, it is not requisite that he should be present at the execution of it, for that none is of the *Quorum*; but any four or more of the Commissioners named, may execute the same without the presence of the Bishop or his Chancellor. If the See of the Bishop be void at the sealing of the Commission, then the Bishop need not to be named a Commissioner, neither his Chancellor, and the Metro-

who must be Commissioners.

Bishop.

Metropolitan ſhall not be named in ſtead of the Biſhop, for that he is not Biſhop of the Dioceſs. And if the Biſhop be named a Commiſſioner, and dye before the Certificate returned, this doth not avoid the Commiſſion, but the other Commiſſioners may proceed.

Power of the Commiſſioners.

2. If a Leaſe or Conveyance be made by parties truſted with a Charitable uſe, whereby the ſame is defrauded, the Commiſſioners may *Decree* the ſame Leaſe and Conveyance to be void. And upon ſuch *Decree*, the ſame is void in Intereſt and Eſtate. And if afterwards upon an Appeal, the *Lord Keeper* adnull the Commiſſioners *Decree*, or *decree* the Leaſe or Conveyance to be good, it is then revived and made good again in Intereſt and Eſtate. And if ſuch Leaſe or Conveyance be aſſigned over to any, the Commiſſioners may *decree* the *Aſſignment* to be void, although the firſt Conveyance was made fraudulently, and in deceipt of the *charitable uſe*.

To avoid an Eſtate.

Power of the Commiſſioners.

3. If houſes given to Charitable uſes be ſuffered to be ruinous and out of repair by negligence, the Commiſſioners may Decree, That thoſe which receive the

the Rents and Profits of them, shall repair the same, although they have otherwise expended the Rents in performance of the Charitable use, and may order the houses to be ever after kept in good repair, as often as need requires. And if they which ought to repair the said houses be dead before the Commissioners *Decree*, The Commissioners may order, that their Heirs, Executors, or Administrators, having Assetts in Law or Equity, shall repair the same.

To order repair of decayed houses.

Statute expound.

4. That the word given in the Statute, extends to gifts after the Statute, as well as to gifts before.

Power of Commissioners.

5. The Commissioners cannot by their *Decree* make a Corporation, not before incorporated, and enable them to take to charitable uses as a Corporation. As Church-wardens which are a Corporation in Law, but to special purposes.

To make a Corporation.

But they may *Decree* Lands held in *Capite*, or in Socage, to a Corporation already incorporate, to be Trustees, to perform a Charitable use, and it shall be no Mortmain.

Power of Commissioners.

Also they may *Decree* Lands given to Charitable uses, to sundry persons, and their

their Heirs, to the ſaid uſes, and enable them to demiſe the ſame Lands for the beſt profit of the ſaid Charitable Uſe; and that when ſuch a number of them die, the Survivors ſhall make a Conveyance to ſettle the ſaid Lands in themſelves that ſurvive, and others to make up and continue the number by them appointed. *To enable a Grant.*

6. If Lands that lye in the body of a County be given to a Corporation, to maintain *Charitable Uſes*, the Commiſſioners of the County may make orders to reform the breaches of Truſts, and miſ-imployment of ſuch Lands by the Corporation. *Power of Commiſſioners.* *To order out of their County.*

CASE 3.

Trin. 9 *Caroli*, *Eaſt-greenſteds* Caſe.

THeſe Points were reſolved by the Lord *Coventry*.

1. That whereas *Robert* Earl of *Dorſet*, had granted a Rent-Charge of 330 l. *per ann.* out of divers his Mannors and Lands in

in *London* and ſeveral Counties, for maintenance of an Alms-houſe in *Eaſt-greenſted*, erected by himſelf. Firſt, That if a Rent be granted out of Lands in ſeverall Counties for maintenance of Charitable uſes in one County, The Commiſſioners in that County, where the Charitable uſe is to be performed, may make a *Decree* to charge the Lands in other Counties, to pay an equal contribution of charge in payment of the ſaid Rent, and there needs not ſeveral Inquiſitions in each County, for that the Rent is an entire grant, by the *Deed* or *Will*.

Power of Commiſſioners.

To order out of their County.

2. If the Deviſees of a Rent-charge, or the Grantees thereof to a charitable uſe, do purchaſe part of the Lands, out of which the Rent is iſſuing, or all the Land: Although in extremity of Law, the Rent-charge is extinguiſhed, yet if the Commiſſioners decree the Rent to be revived, and ſettle it upon others to maintain the charitable uſe, the Rent is revived by the ſaid *Decree*.

Rent not extinguiſhed.

3. If a Rent-charge be granted out of Land to a Charitable uſe, and the Land is afterwards ſold for valuable conſideration of money or land, to one that had no notice

Charitable uſe goes with the Land.

notice of the Rent, yet the Rent remaineth. For that the purchaſe was of another thing, that was not given to the charitable uſe.

4. By the Statute, the parties intereſſed are to have notice from the Commiſſioners, of the time and place of their ſitting to execute the Commiſſion. Yet if the Commiſſioners make a *Decree* without giving ſuch notice to the parties intereſſed, it is good. And if the parties upon their Appeal do take exception, that they had not any notice of the time of the executing of the Commiſſion from the Commiſſioners, That ſhall not avoid the *Decree*, unleſs they ſhew withall, in their exception, that for lack of ſuch notice, they loſt the benefit of ſuch an Exception, to the Commiſſioners or ſome of them, or of ſuch a challenge to a Juror, expreſſing the cauſe in certain: And if the *Lord Keeper* adjudge the cauſe ſhewen to be a ſufficient Exception and Challenge, the *Decree*, or *Orders* of the Commiſſioners ſhall be adnulled and reverſed without further examination, for the intent of ſuch notice to be given, is, That the parties intereſſed may make their

Notice to be given to parties intereſſed, of the Commiſſion to be executed.

Decree good without it.

their lawful challenges to the Commissioners or Jurors, as the Statute alloweth them.

Notice to a Purchasor of the Land of the use.

How to be given.

5. Resolved, That the notice which a Purchasor of Lands given to charitable uses ought to have; ought to be certain, and a general notice is not sufficient. As if Land given to charitable uses be intended to be sold by Act of Parliament: and when the Bill is read in the house of Parliament, it is there spoken unto and declared, that the Land is chargeable with a charitable use, and recompence is offered otherwise to assure the charitable use then by that Land, and afterwards the Bill doth not passe, and the Land is sold to one of the Members of the House that spake unto the Bill for money. Yet this notice in Parliament, is not sufficient notice, within the intent of the Statute, because it was not known to such a Purchasor, but as a Parliament man in another capacity.

Purchasors Notice.

6. If a Purchasor of Land given to charitable uses, for consideration of money, hath Legal notice of the use, and afterwards selleth the Land to another for money, who hath no notice of the use.

use. This second Purchasor shall hold the Land chargeable with the charitable Use, for that the first Purchasor held it so, and the second Purchasor coming under his Title, must hold it subject to the charges the first Purchasor held it, for that he claims under him; But if the first Purchasor had no notice of the use, then is the Land discharged of the charitable use: and if he afterwards sell it to another for money that hath notice of the use, yet he shall not hold it subject to the charitable use, for that the Land was discharged thereof upon the first Purchase.

This use will go with the Land.

7. That if a Rent-charge be granted to a charitable Use, out of Lands in several Counties, the Commissioners are to charge this Rent by their Decree, upon all the Lands in every County, according to an equal distribution, having regard to the yearly value of all the Lands chargeable with the Rent, and cannot by their Decree charge one or two Mannors with all the Rent, and discharge the residue in other Counties or places, for that their Decree will then be contrary to the Will of Founders or Donors.

How a Rent out of Land is to be laid.

Power of the Commissioners.

CASE

CASE 4.

16. Martii, 4 *Caroli.*

Notice to parties interessed of the Commissio.

BEtween the Poor of *Walthamstow* in *Essex.* and upon a Devise of money by one *Colby* to relieve the Poor there; these Points were resolved: First, *S.* took exception upon his appeal in Chancery, That he had no notice of the time and place of the Execution of the Commission from the Commissioners, whereby he lost the benefit of his challenge to some of the Jurors that were Inhabitants in *Walthamstow*, as being parties interessed; and upon proof it appeared, that the number of eighteen, were sworn upon the Jury, whereof three of them were substantial men of *Walthamstow*, and none of the Poor there to take benefit by the Gift; and the Lord Keeper disallowed the Exception, for that it appeared fifteen others were of the Jury, against whom no Exception is taken, and a Verdict of twelve or more, is good, although others of

of the Jury, above the number of twelve diſſent; alſo the three Inhabitants were no parties intereſſed in the Gift, and may be Jury-men, they being none of the Poor of the ſaid Pariſh. Secondly, if one be authorized by a party ſubject to the *Decree* of the Commiſſioners for a charitable Uſe, as a Counſellor, Solicitor, or Attorney, to ſolicit and defend his Suits, and notice is given to his Attorney, Counſellor, or Solicitor, by the Commiſſioners of the time and place for execution of the Commiſſion againſt the perſon ſo entertaining him, telling and adviſing him to acquaint the party intereſſed therewith, and giveth him timely notice to acquaint him accordingly; and at the time and place of meeting, neither the party intereſſed, nor any other cometh to make defence and challenge, if the Commiſſioners proceed to enquire and make a *Decree*, it is good, and the notice to his Clients is ſufficient: and in the Caſe of *S.* it was proved, that he was an aged man, and not able to follow his own buſineſs, dwelling in a remote County, and that he had a Son a Counſellor at Law, who attended his Fathers buſineſs in other

things, unto whom the Commiſſioners gave notice of the time and place for executing the Commiſſion, and that he might have given his Father timely notice of it, and it was taken as a neglect of purpoſe to avoid the Commiſſion. Alſo it was proved, that the Father had perſonal notice of the time and place appointed by the Commiſſioners to make the *Decree*, and his Son came to attend it, but did not take any Exception to the Jurors; And the Lord Keeper ſaid, That notice was ſufficient, although he had no notice of the Inquiry.

Who chargeable for the Profits of Lands to Charitable uſes.

Thirdly, If one Deviſe money to a Charitable Uſe for relief of the Poor, and makes two Executors, and dies, and they prove the Will, and joyntly intermeddles with the Receipt of money, and one truſts the other with the money given to perform the charitable Uſe, and to pay it accordingly, and he waſtes it and dies inſolvent, the ſurviving Executor ſhall be charged to pay the money for the charitable Uſe, if the Teſtator left Aſſetts to pay it, for that they joyntly meddled in the execution of the Will; but if the Executor that died had only proved the Will

Will in the name of both Executors, and the ſurviving Executor never meddled in the execution of the Will, but left all to the other, and he had waſted the Eſtate, and died inſolvent, the ſurviving Executor ſhall not be charged with the charitable Uſe out of his own Eſtate, for that the other Executor had a joynt authority with him from the Teſtator and he would not prevent his intermeddling, and the Survivor had no other means to prevent his charge, then by his refuſal.

Executors how chargeable.

Laſtly, If money be given to a charitable Uſe by Will, and the Executors detain it in their hands many years without imploying it according to the Will, having Aſſets, the Commiſſioners may *Decree* the money with damages for detaining of it, to be imployed in the charitable Uſe, according to their diſcretion, not exceeding 8 l. *per cent.* for a year, for the damages.

Power of Commiſſioners.

To give Damages.

CASE 5.

Mich. 10 *Car. int.* Inhabitants of *Eltham* in *Kent*, againſt *Warreyn.*

How Profits improved of the Land, is to be ordered.

THe Caſe was thus: Land was given the time of *Hen.* 8. being then of the value of 3 *l. per ann.* to the Pariſhioners of *Eltham*, to repair the High-ways there, this Land doth improve to be of the value of 11 l. *per ann.* divers of the Pariſhoners being Veſtry men there, do Demiſe this Land and Houſe upon it, to *Warreyn* for fifty years, at 3 l. Rent *per ann. Warreyn* cuts down Timber-trees, growing upon the Land, and repairs the Houſe with part, and ſells, and otherwiſe diſpoſeth of the reſidue, and pays the 3 l. Rent yearly, which is beſtowed in repair of the High-ways; The Commiſſioners Decree *Warreyn* to pay Damages for cutting down three Trees, and that his Leaſe ſhould be voyd, and ſurrendred up to be cancelled, and to pay the ſurplusage of the true value of the Land, as it was improved at the time of the

Power of Commiſſioners.

To order repair of decayed Houſes.

the Leaſe for the time he enjoyed it, and that divers of the Pariſhoners, naming them p rticularly, ſhould be Truſtees to the ſaid Land, for the beſt profit of the Charitable Uſe, and that ſuch a number ſhould enfeoff others of the Pariſhoners to continue the number of the Truſte s, by the Decree appointed. And upon *Warreyns* Appeal to the Lord-Keeper; the Decree of the Commiſſioners was confirmed in all things, and reſolved, 1. That the cutting down of the Trees was a waſte, for which *Warreyn* ſhould pay Damages according to the value of them; and beſtowing but part upon the Houſe, not being able to prove the quantity, it was fraud in him, to colour his diſpoſing the reſidue otherwiſe; but if he had beſtowed all, or the greateſt part of the Trees in the repair, it had been no waſte: 2. It was Reſolved, That Commiſſioners may give Coſts to the party which proſecuts a Commiſſion, to reform a breach of Truſt in a Charitable Uſe, and the *Lord Keeper* may increaſe theſe Coſts, if the party grieved complain without cauſe: 3. The Leaſe being made at an under value, is a breach of Truſt, and

To give Coſts.

To make voyd a Lease.

fraud, to deceive the Charitable Use of the true value of the Land: And the Commissioners may Decree the Lease to be voyd and surrendred, and that the Lessee shall pay the true profits of the value of the Charitable Use above the Rent reserved. And lastly, the Commissioners may by their Decree, inable persons as Trustees, to have interest in the Lands given to Charitable Uses, and to Demise the same according to the improved value.

CASE 6.

In the Case of *Sutton Colefield in Com. War.* Hill. 11 *Car.*

Power of Commissioners.

First, It was Resolved, That it is not material that the Commissioners wch were present at the time the Evidence was given, and of the taking of the Inquisition, be present at the making of the Decree; for if any, or all of them are absent at the time of the making of the Decree, which were present at the time of the taking of the Inquisition and Evidence

dence, the Decree is good, if it be made by four Commiſſioners, or more. And if it appears by the Return, That the names of four Commiſſioners were affixed to the Inquiſition, and four other Commiſſioners to the Decree, all is good.

To make the Decree.

Though not preſent at the taking of the Inquiſition.

Secondly, Reſolved, If Lands of the value of 3 l. *per ann.* be given to maintain a School-Maſter; and in the Deed, it is expreſſed, That the ſaid 3 l. ſhall be only imployed to maintain that uſe, and no other Uſe is expreſſed in the Deed; and afterwards the Land increaſeth to a greater value, all the increaſed Rent ſhall be imployed for maintenance of that Charitable Uſe, becauſe it doth not appear, that the Donor had any intention that the Profits of his Land ſhould be imployed to any other Uſe; and at the firſt he gave ſo much as the Land was worth.

To diſpoſe of the Improvement.

Thirdly, Reſolved, If Land given to Charitable Uſe, be ſold for money to one that hath notice of the Uſe, this notice did make the Land charitable with the uſe in all other Purchaſors hands, although the other Purchaſors had no notice of the Uſe, becauſe they take the

Land charged with the uſe in the hands of Purchaſors.

Land charged with other Incumbrances as the first Purchasor held, but if the first Purchasor had notice of the Use; then is the Land discharged of the Use, and it shall so remain in all the Purchasors hands, although they had notice of the Use.

Breach of Trust.

Improvement.

Fourthly, Resolved, If Land of the value of 3 l. *per ann.* is given to a Charitable Use, which is paid accordingly, and afterwards the Land increaseth to a better yearly value; if the increased value be not also paid to the Charitable Use, that is breach of Trust, which the Commissioners may reform, if no other use of imployment of the Revenue be expressed in the Donors Deed.

Power of Commissioners.

Over Visitors and Trustees.

Fifthly, Resolved, If Land be given to a Corporation, or other particular persons to perform a Charitable Use, and the Donor appoint them Visitors, also of the use according to his intent, if the said Visitors do break the Trust, either in detaining part of the Revenue, misimploying, or any other wayes defrauding the Charitable Use; this may be restored by Decree of the Commissioners, notwithstanding the Statute of 43 *Eliz.* which disables Commissioners to meddle

meddle with Lands given to Charitable uſes, where ſpecial Viſitors are appointed, for the intent of the Statute is to diſable Commiſſioners to meddle with ſuch a Caſe, where the Land is given to perſons in truſt, to perform a charitable uſe, and the Donor appoint ſpecial Viſitors to ſee theſe Truſtees to perform the uſe according to his intent, if the Truſtees defraud the truſt, the Commiſſioners cannot meddle, but the Viſitors are to perrorm it; but where the Viſitors are Truſtees alſo, there the Commiſſioners may by their *Decree* reform the abuſe of the Charitable Uſe.

CASE 7.

Hynſhaw and *Pydwers*, and the Mayor of the Corporation of *Morpeth* in *Northumberland*, 5 *Car.*

KIng *Edw.* 6th. gives Land to the Mayor and Commonalty of *Morpeth*, of the value of 20 l. *per ann.* to maintain a School-Maſter there, and appoints them Viſitors

Power of Commiſſioners over Viſitors.

Visitors of the School-Master and Scholars, that they behave themselves according to his Orders, this Land increaseth to 100 l. by the year, and the Corporation did only bestow on the School-Master the 20 l. *per ann.* according to the value at the time of the first Gift. A Commission is granted to reform this breach of trust, and the Corporation upon Summons refused to appear before the Commissioners, for that they are appointed Visitors, and the *Proviso* of the Statute doth exempt in such cases the power of the Commissioners: The Commissioners certifie this to the *Lord Keeper*, and that the Visitors were the persons trusted, and did break the Trust; And Serjeant *Thomas Crew* moving the Lord Keeper upon this Certificate the 22. of *May*, 5 *Car.* the Lord Keeper declared his Opinion to be, That the Commissioners might proceed in the execution of their Commission; for the Visitors being Trustees and Parties breaking the Trusts, are not within the intent of the Proviso; and if it should be otherwise construed, this breach of Trust would escape unpunished, unless in *Chancery* or in *Parliament*; which were

were a tedious and chargeable Suit for poor perſons. And the *Lord Keeper* ſaid, That the not beſtowing of the increaſed value of the Land given, was a breac of Truſt in the Corporation, if no other uſe be expreſſed in the Letters Patents. Alſo it was then ſaid, If Land be given to maintain a charitable uſe for relief of poor, and alſo that the School-Maſter or Poor ſhall pray for the Donors Soul, that the charitable uſe ſhall be ſaid, the principal intent of the Donor, and the praying for his Soul, but an acceſſary, and therefore the charitable uſe ſhall ſupport and preſerve the Land.

Improvement of the Land.

CASE 8.

The Caſe of the Inhabitants of *Woodford* in *Eſſex* againſt *Parkhurſt*; *Hill.* 14 *Carol.*

SIr *Henry Leigh* did purchaſe Copyhold Lands in *Woodford*, in the name of two of his younger Sons, and their Heirs, they being within age, and by his Will, Deviſeth to Sir *William Martin* and

and other Parishioners of *Woodford*, and their Heirs, a Rent-charge of 40 s. *per annum*, out of this Copyhold Land, for relief of the Poor there, and dyes: Sir *William Martin* purchaseth this Land, and enjoyes it for many years, and then sells the Land unto *Parkhurst* and his Heirs; *Parkhurst* hath notice of the Charitable Use: between the Surrender and his admittance, the Commissioners Decree *Parkhurst* to pay all the Arrearages since Sir *Henry Leighs* death; and upon his Appeal, the *Lord Keeper* resolved these Points: First, That the Rent is well Devised, although Sir *Henry* had nothing in the Land in strictness of Law, for that the Estate in Law, was in the children, yet Sir *Henry* making the Purchase, and enjoying the Land as owner, and receiving the Profits of it, he shall be said in Equity to have power to dispose to a charitable use. Also it being objected, That there wanted a Surrender to enable him to Devise, the *Lord Keeper* said, Yet the Devise was good enough, and shall be said a good gift, limitation, and appointment within the Statute, in favour of Charitable uses. Secondly, resolved,

Rent not extinct.

That

That the Rent, although it was extinct in Law, by Sir *William Martin* purchased, yet by the Commissioners *Decree* it is revived. Thirdly, Resolved, The Rent is not extinct by this Purchase, although he had no notice of the same, for that the Purchase is of another thing then was given to the Charitable use. Fourthly, Resolved, That the Rent is a charge which goes with the Land, in whose hands soever it comes, and a Distress may be taken for the arrearages, upon the Terr-Tenant for the time it was arrear in others hands, and the owners remedy, to have contributio against all others that enjoyed the Land before him, is by Suit in *Chancery*; And here *Parkhurst* by the *Decree*, had contribution against all others that enjoyed the Land charged, and suffered arrearages to accrue in their time. Lastly, Resolved, That the notice of the Rent given to *Parkhurst*, after the Surrender and agreement for the Purchasor, and before his admittance, was a sufficient notice within the Statute; if notice in this case had been requisite, for that *Parkhurst* was no compleat and absolute Purchasor before admittance, so of notice given to a Pur-

Charge continue on the Purchasor.

Notice to be given to a Purchasor of the Land charged?

a Purchaſor, of a Charitable uſe chargeable upon the Land, mean between his agreement, and ſealing of the Writings, before the perfecting of the ſettling of the Eſtate in him, by Attornment, Livery, or Inrollment of the Deed of Conveyance.

CASE 9.

Hennington Haſtings in Com. *Warr.* 6 *Jacob.*

ONe *Humfrey Davis* erected an Alms-houſe in *Hennington Haſtings*, for eight poor men, and being Seiſed of Lands in *Tennington*, *Monton*, and *Burbery*, then let for 10 l. Rent *per annum*, doth deviſe the Rents of his ſaid Lands, for maintenance of the ſaid poor in the ſaid Alms-houſe, and dyes, his Heir payes the Ten pound yearly for maintenance of the poor, at the Alms-houſe, and at the end of the term, doth Demiſe the Land at 40 l. *per annum*. The Commiſſioners do *Decree* the whole Land for maintenance of the Charitable Uſe, and the arrearages of the improved Rent taken by the

the Heir from the time of the expiration of the old Leaſe, untill the *Decree*, and that the new Leaſe ſhall be void, and ſurrendred; and upon the Heirs appeal in *Chancery*, and acceptions taken to the *Decree*, the *Lord Keeper* referred the Caſe to the Judges principally, Whether if one Deviſe the Rents of his Land to a Charitable Uſe, If by this Deviſe, the Land paſſed? And they certified their Opinions, That by Deviſe of the Rents of the Lands to a Charitable uſe, the Land it ſelf did paſs. And in 12 *Jac.* in the Caſe of one *Kerry* and *Dethick*, it was Adjudged, That if one Deviſe to another and his Heirs, the Rents and Profits of his Lands, that this is a Deviſe of the Land it ſelf. Alſo they Reſolved, That when one Deviſeth the Rent of his Land to a Charitable Uſe, it ſhall be taken largely for a Deviſe of the Rent then reſerved, or afterwards to be reſerved upon an improved value. And the *Lord Keeper* did afterwards confirm the Commiſſioners *Decree* in all things.

Power of Commiſſioners.

In an Improvemnt.

Deviſe.

CASE

CASE 10.

The School of Thetford's *Caſe upon a Bill exhibited in* Parliament, 8. *Jacobi.*
8. *Coke* fol. 130.

Deviſe of a Charitable uſe.

LAnd of the value of 35 *l.* by the year, was by Sir *Thomas Fulmerſton* 9. *Eliz.* Deviſed to certain perſons in Truſt, and their Heirs, for maintenance of a Preacher, School-maſter, and poor people, in *Thetford*, and by the Will, a ſpecial diſtribution was made, how much the Preacher, School-maſter, and Poor ſhould have, amounting in the whole unto 35 *l.* by the year, which was the value of the Land at the time of the Deviſe, and afterwards the Land increaſeth to be by the value of 100 *l.* by the year, and upon a Reference to the *Chief Juſtices*, and Judge *Walmſley*, they certified their Opinions, that the revenue of the Lands ſhall be employed to increaſe the ſeveral ſtipends of the perſons appointed to be maintained by the Deviſor, and if any ſurpluſage do remain, it ſhall be imployed for the maintenance

How taken.

of

of a greater number of people, and nothing ſhall be converted by the Deviſees, to their own uſe, for that it appeareth by the diſtribution of the Deviſor, that he intended that all the Profits of his Lands, ſhall be imployed in the Charitable Works by him Founded, and left nothing to his Heirs or Executors, of the Profits of his Lands, as they were in value at his death, and as if the value of the Lands had decreaſed, the poor ſhould have loſt in their ſtipends, ſo when the Revenue of the Revenue of the Lands increaſe, they ſhall gain; and the Lord *Coke* ſaid, that this Reſolution did concern all the Colledges in the *Univerſities*, and elſewhere; for when the Lands were firſt given for their maintenance, and that every Scholler ſhould have a penny half peny a day, this was then a competent Allowance for a Scholler, in reſpect of the price of victuals then and yearly value of the Land, and now the price of victuals being increaſed, the firſt maintenance for Schollars, is not competent for them; and as the value of the Lands increaſe, ſo ought the Allowance for the Schollars to increaſe; for the Colledges

Improvement how to be diſpoſed.

seised in *Jure Collegii*, to the intent that the members of the Colledge shall be maintained, according to the intent of the Founder, which is, that all the Revenue and Increase of the Profits of their Lands, shall be bestowed in the Works of Charity, which the Founder hath expressed, and that nothing should be committed to any other private uses, for *panis egentum est vita pauperum, & qui defraudat eos homo sanguinis est*, and upon conference with all the Judges of *England*, they agreed to the Opinion of both the aforesaid Judges, and both Houses of Parliament passed the Bill accordingly, and the King assented to the Bill.

CASE 11.

Thing in Action given to Charitabl. use.

IN *Mich.* 12 *Jac.* in *Chancery*, The Case was; *Anne* the wife of Sir *Henry Billingsley*, was before the Wife of one *Martin*, and Administratrix of his Goods, and there was due to *Martin* 1800 *l.* Debt by a Statute-Merchant, acknowledged by one *Southwell*. Dame *Anne* made

made her Will in the life of *Henry*, and thereby appointed out of this Debt divers particular Legacies to her Kindred, and after also 400 *l.* to Charitable Uses. With this Proviſoe, That if there ſhould ariſe any Croſs in Law, or Loſs in the ſaid Debt of 1800 *l.* her meaning was, that it ſhould fall upon the laſt 900 *l.* mentioned before the Proviſoe: And of this 900 *l.* the 400 *l.* for Charitable Uſes was a part, and the laſt. *D. creed.*

Dame *Anne* dyed a Feme-Covert: *Peacock* and *Peacock* her Executors refuſed to intermeddle with the Debt, becauſe ſhe had it but as Adminiſtratrix, and could make no will of it, and alſo becauſe it was a thing in Action. And thereupon the Adminiſtration of the Goods, not Adminiſtred of *Martin*, the firſt Husband of Dame *Billingſley*, was committed to *Damus*, and others. And thereby they had Debts of 2000 *l.* beſides the 1800 *l.* upon the Statute. And hereupon an *Inquiſition* was taken upon a *Commiſſion* of Charitable Uſes, direct to *Altham*, Baron of the *Exchequer*, and others in *London*, and a *Decree* made for the maintenance of the charitable uſes. And *Exceptions* ta- *Raiſed by an imperfect Deviſe.*

ken to it by the Administrators. 1. For that her Will was void. 2. For that the 2000 *l.* Debt, was a desperate Debt. 3. There was a Cross and much money spent in it. But the *Decree* of the *Commissioners* was affirmed by the *Lord Chancellour*. For first, Albeit the Will of the Lady were void in Law, yet it was a Good; yet it will serve for a *Declaration* upon the Statute for Charitable Uses; so that if there be *Assets* of that Estate, or of his own Estate that is to execute it, the Use shall be supported; For the Goods in the hands of Administrators are all to go, and be imployed to charitable uses, and Kindred, and Children can have no property nor preheminence in them, but under the Charity of the Ordinary. 2. It was confest, that when the *Decree* was made by the *Commissioners*, the Estate would have born it, and there was *Assets*; and therefore there was negligence in the management of the Estate. Whereupon *Damus* was compelled to pay the 400 *l.* to the charitable uses, and to take the help of the Court, for recovery of the Debts of the Intestate. *Moors Rep. Case* 1111. *Damus Case.*

Case

CASE 12.

JOhn *Colliſon*, 1. *April*, 1534. in 25 *H.* 8. being ſeiſed in his Demeſne as of Fee of a Meſſuage in *Popes*-Street, with all the Lands thereunto belonging in *Eltham*, in the County of *Kent*, the ſame Meſſuage and Land not being deviſable by any Cuſtome, nor eſtated in uſe to any; but he thereof ſeiſed in poſſeſſion, did make his laſt Will and Teſtament in Writing, in theſe words.

I bequeath to Lettice *my Wife, my houſe in* Pope-ſtreet, *with all the Lands thereto belonging, during her life; and after her deceaſe, I make* John Brecket, John Willeden, Henry Steevenſon, *and* Ralph Bride, *Feoffees in the ſaid Houſe and Land, to ſee the ſame kept in ſufficient Reparations. And the reſt of the Profits of the ſame Rents, after the diſcretion of the ſaid Feoffees, to be beſtowed yearly upon the Reparation of the High-way between* Wyel-Elm *and the Town, and between* Neuſted-Croſs *and the*

Charitable uſe raiſed by a defective will.

Town where moſt need is or ſhall be. John Colliſon *and* Lettice *his Wife being both dead, the Commiſſioners in* Kent, *upon the Statute of* 42 Eliz. *for charitable uſes, made a Decree for the imployment of the Profits of the Lands upon the Repair of the ſaid way*; Which *Decree was* 13 July, 13 Jac.

The Queſtion was,

Foraſmuch, as this Will was made before the Statute of 32 *H.* 8. and the Land not in uſe; Whether it ſhall be ſaid, a *Limitation, Appointment*, or *Aſſignment*, within 43 *Eliz.* to warrant the *Decree*.

The Caſe was referred to the two Chief Juſtices *Mountague* and *Hobart*, who having heard Councel on both ſides at *Serjeants-Inn*, did certifie the *Lord Chancellour*, 3 *Junii* 1617. in theſe words:

May it pleaſe your Lordſhip, *We have conſidered of the Caſe hereunto annexed, according to an Order of the* 25 *of* April *laſt, in the preſence of Counſel learned of both Parties. And we are of Opinion, that the intended Deviſe made by the ſaid* John Colliſon,

lison by his Will, is a Limitation *or* Appointment *to a charitable use, to be relieved by the Statute of* 43 Eliz. cap. 4.

Upon which *Certificate*, the *Lord Chancellour* did confirm the *Decree*, notwithstanding the *Exceptions* put into it by one *Rolt* an Infant, to whom the Land was discended. *Moors Rep. Case* 1251. *Rolt*'s Case.

CASE 13.

Sir *Tho. Middletons* Case. 1617.

Money abated of Soldiers wages.

Soldiers and *Marriners*, by a voluntary Contribution amongst themselves, abates out of their Wages of 6 s. a month, 4 *d.* by the month; and he which taketh 5 *s.* by the month, 3 *d.* by the month, and appoints this to be paid to Sir *Tho. Middleton*, to the intent that he shall imploy it for relief of maimed *Souldiers* and *Marriners*, upon the Seas, their Wives and Children, and Sir *Thomas* receives by this Appointment, 400 *l.* which he keeps in his hands about 20 years. This volun-

tary Contribution was made by the *Mariners* and *Soldiers* attending Sir *Francis Drake*, and Sir *John Hawkins*, in their Voyages to the *West-Indies*, upon a Commission upon the Statute of *Charitable Uses*; this voluntary Agreement and Constitution of the *Souldiers* and *Mariners* was proved before them, and that Sir *Thomas Middleton* had received by reason thereof 400 *l.* which he had detained in his hands 20 years. The Commissioners make a *Decree* for payment of the said money, with some Damages; and upon Appeal to the *Lord Keeper*, he confirmed this *Decree*. *Moors Rep. Case* 1152.

Power of Commissioners.

To give damage.

CASE 14.

Riveits Case, 15 *Iac.*

Copyhold given to this use.

A Copy-holder of Land in Fee, Deviseth the same to a charitable use without a Surrender, Commissioners make a *Decree* for the Land, and upon Appeal, the *Decree* was confirmed; for although it be a void *Devise* by the Common

mon Law, yet it is a good Limitation and Appointment of Land to a charitable uſe, and it ſhall bind the Heir, but not the Lord for his Fine.

This Deviſe was made unto the Deviſors Son and Heir, and his Heir, upon condition, that he and his Heirs ſhould imploy the profits of the Land, for the relief of *Stow* Market in *Suffolk*, and after the Deviſor dyed, without a Surrender to the uſe of his Will. In 6 *Iac.* the Heir having ſold the Land to one *Flick*, for valuable conſideration of money, ſues out a Commiſſion upon the Statute of *Charitable Uſes*, by Fraud and Covin between him and *Flick*, to diſcharge this Land of the *charitable uſe*; upon which Commiſſion, it was proved before the Commiſſioners, that *Flick* had any notice of this *charitable uſe*; but it was proved, that the Heir that ſold the Land had Aſſets, both in Law and Equity, to give Allowance out of his Eſtate to maintain this *charitable uſe*: Whereupon the Commiſſioners Decreed, that the Son and Heir ſhould grant out of his own Land, the ſum of five Marks, and to maintain this *charitable uſe*; it being then proved, that

Commiſſion ſued out of Fraud to void the uſe.

that the Land deviſed for the Charitable Uſe, was of no great value; And they further Decree, that *Flick* ſhould hold his Land diſcharged of the charitable uſe: And this *Decree*, being certified into the *Chancery*, and proſecuted by the Heir and *Flick*, with intent to diſcharge the Land deviſed, of the charitable uſe, the *Lord Keeper* confirmed it: Afterwards the Pariſhioners of *Stow*-Market having notice of this Fraud, and that the Land Deviſed was worth 7 *l.* 10 *s. per ann.* they in 14 *Jac.* ſue out another Commiſſion upon the ſaid Statute; and before the Commiſſioners it was proved, that *Flick* had notice of this charitable uſe before he bought the Land. Secondly, it was proved, that the firſt Commiſſion was ſued out by Fraud and Combination between the Heir and *Flick*, on purpoſe to diſcharge the Land Deviſed of this charitable uſe. Thirdly, it was proved that the Land Deviſed was worth 7 *l.* 10 *s. per ann.* And fourthly, that the Heir had not paid the five Marks Decreed by the former Commiſſion to be paid; upon all which proofs, the latter Commiſſioners Decree *Flicks* Land for maintenance

of

of the charitable uſe appointed; and the Jury having found the former Commiſſion to be proſecuted by Fraud and Combination, as aforeſaid, they Decree that *Flick* ſhall pay the full value of his Land by the year to the charitable uſe, from the time of his Purchaſe. And laſtly, they Decree, that the Heir that ought to have paid the five Marks *per ann.* for divers years, and hath not paid it at any time, ſhould pay the Arrearages, and then his Land to be diſcharged from further payment of it. This latter Decree being certified in the *Chancery*, *Flick* took exception, that the ſecond Commiſſion iſſued out illegally, there having been a former Commiſſion and Decree, to diſcharge the Land of the *charitable uſe*, which was confirmed by Decree of his Court, which ought to be final, and is not to be reverſed but in Parliament, according to *Andrew Hynſtors* Caſe before; and if a Commiſſion upon a Commiſſion ſhould iſſue out upon this Statute, ſuch multiplicity of Suits would ariſe as that it would prove inconvenient, and multiplicity of Suits is not allowed in Law. But the *Lord Keeper* did confirm the ſecond *Decree*, becauſe

cauſe of the Fraud and Combination between the Heir and *Flick*, in ſuing out the firſt Commiſſion, which was found by the Jury, and proved before the Lord Keeper; and therefore he now reverſed the firſt Decree, and confirmed this; for that by the Law, *Fraus & dolus nemini patrociniam debet*; but if a Decree be legally made without Fraud by the Commiſſioners for charitable uſes, and upon Appeal this is confirmed in the *Chancery*, and where a Decree is made by Commiſſioners for charitable uſes, and this Decree confirmed in *Chancery*, if the Decree be not performed accordingly: now no Commiſſion need be ſued out, for upon an *Affidavit* made of a breach of the Decree, an *Attachment* and other *Proces* of courſe is to iſſue out to compell the parties concerned, to perform the Decree; yet if a ſecond Commiſſion do iſſue out, it is not illegal, if nothing be decreed againſt the firſt Decree; and upon this ſecond Commiſſion, they are to decree by form of the firſt Decree, if they find a breach. See it in *Moors Rep. Caſe* 1153.

CASE

CASE 15.

Barnard Hide's Case.

TRinity, 4 *Car. Barnard Hide's* Case againſt the Pariſhioners of *Gillingham*, *Darford*, and *Sutton* in *Kent*.

Katherine Barne grants by Deed a Rentſeck out of 208 Acres of Land, for relief of the Poor in thoſe Pariſhes, and limits this to commence after her death, and gives ſeiſin of this in her life, the Rent is behind for 36 years, *Hide* purchaſeth the Land, having notice of the *Charitable Uſe*, and in the Grant there was a *nomine pœnæ* of 50 *s.* if the Rent be not paid by her Heirs within 14 days after it was due by the Grant, and it was found that *Hide* had held the Land 7 years; upon a Commiſſion for charitable uſes, the Commiſſioners Decree, that *Hide* ſhall pay all the Arrearages for 36 years, and alſo the Arrearages of the *nomine pœnæ* for 7 years, being the time he had enjoyed the Land, and Decree that the Grantor ſhall diſtrain

Power of Commiſſioners.

ſtrain for the Rent for ever after. And the Commiſſioners Decree being returned in *Chancery*, the Lord Keeper referred it to the Judges, who reſolved theſe Points:

To order pay of Arrears.

Firſt, That *Hide* ſhould pay all the Arrearages for 36 years, for that the Land is chargeable with the Rent, in whoſe hands ſoever it cometh.

Secondly, That the Seiſin given by the Grantor in her life, is good, although the Rent did not commence, or was in *eſſe* at the time of the Seiſin given.

Purch for, how chargable with the uſe.

Thirdly, If Land or Rent be given to a charitable uſe, and miſ-imployed, a Purchaſor which hath notice of the Gift, ſhall not be further charged then during his own time; but where the Rent is concealed, a Purchaſor ſhall anſwer for all the time of the concealment, for the Land is a Debtor, *& tranſit cum onere.*

Notice to be given.

Fourthly, If a Rent be granted out of Land to a charitable uſe, and one buyes the Land for a valuable conſideration of money, having no notice of the Charitable Uſe and Rent, yet the Rent remains, becauſe it is collateral to the Land, and another thing; and the notice required by

by the Statute is to be given, as well of the Land, as of the charitable uſe.

Fifthly, Reſolved, that the Purchaſor ſhall not pay the Arrearages of the *nomine pœnæ*, becauſe it was a perſonal charge upon the Heir, who ought to have paid the Rent, and it doth not charge the Land.

Power of Commiſſioners.

Sixthly, when the Heir or others, charged to pay a charitable uſe, to break the Truſt, the Commiſſioners may transfer the Truſt unto others, as to the Church-Wardens, or other Pariſhioners of the Pariſh, where the charitable uſe is to be diſtributed.

To transfer a Truſt.

Laſtly, It was reſolved, that if a Rent-ſeck be granted to a charitable uſe, the Commiſſioners by their Decree cannot make this a Rent-charge, by adding a Clauſe of Diſtreſs, unleſs it be for that this alters the nature of the Rent in the creation of it, and is againſt the mind of the Donor.

CASE 16.

CASE 16.

Mich. 14 *Car.* *Plate* and the *Masters* and *Fellows* of St. *Johns* Colledg *in Cambridg.*

Copyhold-Land.

Plate being seised of Copyhold-Land in tail in *High-Gate* in *Middlesex*, surrenders this in Court to the use of his Will, and suffers a Recovery in the Court of the Mannor, in which no Judgment is given against the Vouchee, and after Deviseth by his Will, this Copyhold Land, and all his Freehold Land to his wife for life, the remainder to the *Master* and *Fellows* of St. *Johns Colledg* in *Cambridg*, for maintenance of the Scholars there; the Heir of *Plate* enters upon the wife, to avoid the Devise, and the *Masters* and *Fellows* prefer a Bill in *Chancery* to preserve their interest, and to have the Devise, and the *Master* and and *Fellows* prefer a Bill in *Chancery* to preserve their interest, and to have the Devise to them confirmed. The *Lord Keeper*, *Littleton*, resolves, That if no Judg-

Devise to this use.

Judgment be given againſt the Vouchee, to have in value, in caſe of a Common-Recovery to cut off an Eſtate tail, that it is a void Recovery, and will not cut off an Eſtate tail: And as to the wife, to whom the Land was Deviſed for life, the Heir had liberty given by Law to evict them: But as to the *Colledg*, and the remainder limited to them, the *Lord Keeper* did declare, That the Deviſe is good to them by the Statute, 43 *Elizabeth*, touching Gifts, Limitations, and Appointments of Lands to charitable uſes; for there is gift and limitation of the Land to a charitable uſe, which ſhall not be avoided for want of circumſtance of Law to make it good. And alſo the *Lord Keeper* ſaid, That although the *Colledg* was incorporated by another name then the Deviſe was to them, and therefore might not be capable of it, yet the Deviſe is good to them by the ſaid Statute: Alſo If the Heir avoid the Eſtate tail againſt the Wife at Law, yet the remainder to the *Colledge* ſhall ſtand good, and be a remainder without a particular Eſtate, which by rules of Law cannot be; but theſe defects in caſes of Charitable Uſes, *Recovery.*

are made good by that Statute, by a benigne and favourable interpretation thereupon for maintenance of Charity; as it is in other caſes upon Statutes for Piety and Charity.

CASE 17.

13 *Jacobi*, *Jeſus Colledg* Caſe in Court of *Wards*, referred to the *Judges*.

Deviſe to this uſe.

DOctor *Floyd* ſeiſed of Lands *in Capite*, Deviſeth them to *Jeſus Colledg* in *Oxford*, and their Succeſſors, to find a *Fellow* there, which ſhould be of his blood and alliance; and it was referred to the *Judges*, Whether this Deviſe be good or no? And they Reſolved and Certified, That by the Common-Law and Statute of Wills, the Deviſe was void; for the e Statutes enabled perſons to Deviſe their Lands, excepting to *Corporations*, for that is Mortmain. Alſo, none can Deviſe all their *Capite* Lands to any, but muſt leave a third part to deſcend; but they certified and reſolved, That

That although it be void by the Common Law; yet the Statute of 43 *Eliz.* for *Charitable Uſes*, doth make this good, as a limitation and an appointment, and that it was good for all the Land. But if an Infant or Lunatick, who by Law is diſabled to make a Will or Deviſe of his Land, do deviſe his Land to a charitable Uſe, this is void, and not made good by the Statute, for want of a capacity to make a Will by Law.

CASE 18.

The Lord Edward Mountagues *Caſe in the* Court *of* Wards, 17 *Jac.*

SIr *Walter Mountague* ſeiſed in Fee of *Capite* Lands in *Hanging Houghton* in *Northamptonſhire*, conveys two parts of theſe Lands unto uſes limited within the Statute of 32 and 34 *H.* 8. and by his Will deviſeth the third part, remaining in him, for maintenance of a Charitable Uſe in *Wales*; and upon a Reference unto *Hobart* and *Tanfield*, they Reſolved, *Deviſe to this uſe.*

This Deviſe to be void, and was not aided by the Statute of 43 *Eliz.* for Charitable Uſes, for in the inſtant of his death, the Lands deſcended to the Heir, and the Deviſor having diſpoſed of two parts in his life, according to the Statute of Wills, he is diſabled by the Common Law, and thoſe Statutes, as owner of the Lands, to Deviſe any part of his third part remaining. See Doctor *Floyds* Caſe before in *Jeſus Colledge* Caſe.

CASE 19.

Seymor *againſt the Poor of* Twyford, *Trinity*, 1634.

Power of Commiſſioners.

MOney was given to Charitable Uſes, and detained a long time as concealed; the Commiſſioners upon the ſaid Statute, Decreed the Money to be paid with intereſt, after the rate of 8 l. *per cent.* and this Decree was confirmed by the *Lord Keeper*. So in the Caſe of the Lady *Mountague* of *Ilford*, and the Inhabitants of *Barking* in *Eſſex*, Sir *Charls*

To order Damages.

Moun-

Mountague her Husband, gave by his Will 10 l. to the poor of *Barking*, and made his Wife Executrix, and died; She kept the Money above twelve years in her hands, and the Commissioners Decreed her to pay 20 l. for the detaining this Money, for use and principal; And the Lord Keeper *Coventry* confirmed this *Decree* about 12 *Carol.*

CASE 20.

The Poor of *East-Greenstead* against *Howard.* 8 *Carol.* & 10.

Decree of the Court alterable.

RESolved by the *Lord Keeper* upon Appeal, to alter or confirm a Decree made by Commissioners upon the Statute of *Charitable Uses*, the Decree is not perpetuated, and not to be altered, but by Act of Parliament, and is to remain in the *Petty Bagg*, and it is in his power to make a Decree good where it is defective.

CASE 21.

Hungate on the part of the *Inhabitants* of *Skerton*, 3 *Carol.*

Thing in Action given to this use.

A Debt owing by Statute, Bond, Judgment or Recognizance, which in Law is a thing in action, was given for the creation of a School, and this was *Decreed* to be a good appointment, within the Statute, to maintain a Charitable Use.

CASE 22.

Steward against *Germyn*, 41 *Eliz.*

Devise to this use.

Incertainty.

ONe having Lands and Goods, appoints by his Will, That the same shall be sold to maintain a Charitable Use; and doth not appoint by whom the Sale shall be made; the Commissioners do by their *Decree* appoint, That *J. S.* shall sell these Lands and Goods, and *Decree* his

his ſale to be good, and that the money to be raiſed thereby, ſhall be imployed to maintain the Charitable Uſe, according to the *Donors* Will. And this *Decree* was confirmed by the *Lord Keeper*, upon an *Appeal* to him.

CASE 23.

Hellams Caſe, 5 *Caroli.*

A Deviſe was made of Lands to the Company of *Leatherſellers* in *London*, to maintain a Charitable Uſe there, upon a *Decree* by Commiſſioners, to ſettle the Lands upon the Company, an Appeal was, and Exception taken, for that the Company of *Leather-ſellers* was a Corporation, and the Statutes of Wills doth except Deviſes of Land to a Corporation. But the *Decree* was confirmed, there being many Preſidents in it. *Deviſe.* *Miſtaken.*

CASE 24.

The School of Rugby *in the County of* Warwick. 2 Caroli.

In what County, the Enquiry must be.

ONe seised in Fee of houses in *Grays-Inn Lane, London*, gave these houses to certain persons in Trust, to build a *School* at *Rugby* in the County of *Warwick*; and upon breach of the Trust, a Commission was taken out in *Warwickshire*, to enquire of this Gift; and by a Jury there, the Gift and breach of Trust was found, and a *Decree* made by the Commissioners in that County, to settle the lands according to the Donors Will: And upon an Appeal, the *Decree* was reversed; for the *Inquisition* and *Decree* was not made, nor found by Jurors and Commissioners of the County where the Lands given to such uses do lie: The words of the Statute be, *To enquire by the Oaths of twelve men, or more of the County, of such gifts, limitations and appointments, and of the breaches of Trust of such Lands and*

and Goods, &c. which is intended to be by Jury and Commissioners of that County where the Lands do lie.

CASE 25.

Kensons Case. 41 *Eliz.*

RESolved, That a Copy-hold may be charged or given to a Charitable Use. *Copyholds*

CASE 26.

Wingfields Case. 4 *Car.*

MOney was given for the good of the Church of *Dulk*, and this was Resolved to be a good Gift, notwithstanding these general words. *Gift to this incertain*

CASE

CASE 27.

Goffe cont. *Webb.* 44 *Eliz.*

Devise to this use.

HUnt seised in Fee of the Rectory of *Haynes* in the County of *Wilts*, Devised the same to be sold, and the Money to be distributed unto twenty of the poor of his kindred; And by *Egerton* and *Popham*, this was adjudged a good Devise, notwithstanding it doth not appear that he had any poor Kindred.

CASE 28.

Champion contra *Smith*, 3 *Jacobi.*

Copyhold-Land.

RIdley, seised of Copyhold Land in *Barking* in *Essex*, did Devise the same to the Parson and Church-wardens of in *Thames-street*, *London*, to the end that they, and four honest men of that Parish, should sell this land, and imploy the Money for the poor and charitable Uses in that Parish. And upon an

an Appeal made, it was objected, That the Deviſe was void, becauſe the Parſon and Church-Wardens were not a Co-poration to take Lands out of *London*, nor to ſell it for ſuch uſes; but it was Decreed, That the Deviſe was good, and that they had good authority to ſell the ſame. *Deviſe to one miſnamed.*

CASE 29.

Stoddard, 20 *Jacobi*.

Stoddard Deviſed by parcell, a yearly Rent of 10 l. *per ann.* for ever out of his Houſe, called *The Swan*, with 10 Marks in the *Old Jury*, *London*, for maintenance of two Schollars in *Oxford* and *Cambridg*, and willed, That one *Hugh* the Scrivener ſhould put it into Writing; which was done accordingly: and this being found by Inquiſition, was Decreed, and the Decree confirmed upon an Appeal; for although by Law a Rent cannot be created or granted without Deed or Will in writing; yet this *Nuncupative* Will *Nuncupative Will of Rent Decreed.*

Will was good, to create the Rent to a Charitable use, by the words of the Statute of limitation or appointment; for although it be not a good Gift, yet it is a good limitation or appointment.

CASE 30.

Mayor and *Burgesses* de *Reading*, contra *Lane*. 43 *Eliz.*

Devise by mistake to this use.

A Devise was made to the poor people maintained in the Hospital of St. *Lawrence* in *Reading* for ever; Exception was taken, That the poor were not capable by that name, for that they were no Corporation, yet because the *Mayor* and *Burgesses* were capable to take Lands in Mortmain, and they did govern the *Hospitall*: It was Decreed, That the Defendant *Lane* should assure the Land to the *Mayor* and *Burgesses* for the maintenance of the said *Hospitall*.

CASE

CASE 31.

Mayor of *Briſtoll* againſt *Whitton*, 8 and 9 *Caroli.*

A Man Deviſeth Mony to a charitable uſe, to be beſtowed amongſt poor people, and the other of his goods to be imployed for ſuch uſes as his Feoffees ſhall think fit. Reſolved by the *Lord Keeper*, and the Certificate of two *Judges*, That although *Briſtoll* be a Corporation, yet the Deviſe to them is good.

CASE 32.

Fiſher againſt *Hill.* 10 *Jacob.*

WHen no Uſe is mentioned or directed in a Deed, it ſhall be Decreed to the uſe of the Poor, although the Feoffees be Gentlemen living out of the Town, and no Inhabitants within the Town.

CASE

CASE 33.

Peacock against *Thewer*, Mich. 14 *Car.*

Purchasor how chargeable with the Use.

LAnds are given to a Charitable Use, if a Purchasor buys these Lands, not having notice of the Charitable Use, it shall not bind the Purchasor; but if a Rent be given out of Lands to a Charitable use, and a Purchasor purchaseth the Lands for money, not having notice of the Charitable Use, yet he shall pay the Rent, for that he doth not purchase it, but the land out of which the Rent issueth it; but he shall not pay any more arrearages of the Rent then what was encurred during his time of purchase; but every occupier and owner must answer the arrearages for his own time. See before, *Parkhursts* Case, and the Inhabitants of *Woodford*; and *Barnard Hides* Case, before.

Who must answer the Profits of the Land.

CASE

CASE 34.

2 *Caroli*, *Pennyman* againſt *Jenny*.

LAnds were given to Churchwardens of a Pariſh, to a Charitable Uſe, although the Deviſe be voyd in Land; it was Decreed good in *Chancery*, by the words, *limited* and *appointed* within the Statute.

CASE 35.

Trin. 15 *Car.* *Pember* againſt the *Inhabitants* of *Knighton*.

MOney was given to maintain a Preaching Miniſter; this is no Charitable Uſe named in the Statute, yet by the *Lord-Keeper* and two *Judges*, it was Decreed to be good, and the Uſe a Charitable Uſe, within the Equity of that Statute: and the Executor was ordered to pay that Money to the Charitable Uſe, for maintenance of it. *Charitable uſe what.*

CASE

CASE 36.

Trin. 15 *Car. Penstred* cont. *Panjer.*

Who chargable with this use,

Executor.

A Deviseth 20 l. *per ann.* to a Preaching Minister, and makes his wife Executrix, and dyes, leaving Lands and Assetts in Goods; the Executrix refuseth to buy Lands, or a Rent of that value; the *Lord-Keeper*, and two *Judges* Decree, the Executrix to buy Lands to that value, and to assure it for the Charitable Use.

CASE 37.

Trin. 15 *Car. Bramble* against the Poor of *Havering.*

Devise of the use by a Feme Covert or Infant.

A Feme Covert maketh a Will, and leviseth 30 s. *per ann.* out of some of her own Lands to a Charitable Use; the Heir submits himself to an Award, and is bound to perform it; the Arbitrators do Award

Award the payment of it: yet by Decree, the Heir is discharged to pay it, and that the Devise was void, *ab initio*; so of an Infant, and other persons disabled in Law to make a Will, or to Devise Lands.

CASE 38.

Mayor de *Londons* Case.

LAnds were Divised to the *Mayor* and *Chamberlain* of *London*, to the use of the *Master* and *Governors* of the *Hospital* of St. *Bartholomew*, *London*. Resolved, That Devise is good, although the Corporation be not incorporated by that name, but by the name of *Mayor and Comonalty*; for the intent of the Devisor shall be observed: and it appears, that the Devisor intended to give it to the Corporation of *London*: Also the Will is, To maintain an *Hospitall*, which is a Charitable Use, which the Law ought to favour.

Devise to a Corporation mis-named.

CASE 39.

Pauperes de *Chelmsford*, and Sir *Henry Mildmay*, Mich. 1649.

KIng *Edward* the 6th founded a Free-School in *Chelmsford*, and made it a Corporation of Guardians, Master and Usher, and gave *Chantrey* to them and their Successors, to the value of 300 l. *per ann.* at this day, to maintain the *Master*, *Usher*, and certain poor People in *Chelmsford* and *Moulsham*, and appointed, that the Rents, Issues, and Profits of their Lands should be imployed for their maintenance, and not otherwise; and appointed the Lord *Peter*, and the Heirs males of his Body, Sir *Tho. Mildmay*, and the Heirs males of his Body, Sir *Jo. Tirril*, and the Heirs males of his Body, and Sir *Humfrey Mildmay*, and the Heirs males of his Body, should be Governours of the said Free-School and Lands; and that none under the degree of a Knight, should be one of the Governours; the Go-

Governors make Leaſes of the Lands at under values, for Fines and ſmall Rents, according as they were at the firſt Foundation. The Commiſſioners Decree the Government and Ordering of the Lands to others, by reaſon of their breach of Truſt. Sir *Henry Mildmay* of *Mowſham* near *Chelmsford*, being the chief man that received the Rents, lett the Leaſes, and defrauded the Truſt; the reſt of the Governours Heirs being within age, or beyond the Seas, put in Exception to the Decree. Firſt, That the Corporation had ſpecial Viſitors appointed, and ſo within the *Proviſo* of the Statute: Secondly, For that the Decree is againſt the Founders intent, who would have none under the degree of a Knight to be a Governour, to which was anſwered, That when the Viſitors break the Truſt, they may be queſtioned by Decree of the Commiſſioners, as in the Caſe of the School of *Morpeth*, and other Caſes before cited. Thirdly, That the general intent was of *Edw. 6.* That the Profits of the Lands ſhould be ſolely converted for the uſe of the School and Poor; and that the Viſitors and their Heirs, ſhould make

Powers of Commiſſioners over Viſitors and Truſtees.

no Profit of it, and that of being a Knight, was but for the Honour of the Family, appointed Governours, and they all being persons of great Possessions, and living near *Chelmsford*. But the Lords Commissioners reserved the Decree, by reason of the *Proviso* in the Statute, and ordered that a Bill be exhibited against the now Visitors and Governors, and that upon proof of their breach of Trust, a course should be taken for relief of the School and Poor, according to the intent of the Founder.

CASE 40.

The Case where a Tenant in Capite, *Devised all his Lands to a Charitable Use.*

T. H. seised in Fee of the Mannor of *L.* held in *Socage*, and of 54 Acres of Marshland, held *in Capite*, deviseth all the *Socage-Lands* to *C. Hospital* in *L.* paying 1000 l. after the death of *A.* the wife of *T. H.* as she in her life time should appoint the same to be paid.

Part

Part of the *Socage-Lands* Deviſed to the *Hoſpital*, is by Commiſſion of the Court of *Wards*, ſet out to *N. H.* the Heir, for his third part, *A. H.* dyes, and the *Hoſpital* pays the 1000 l. The Commiſſioners for Charitable Uſes, have Decreed to the *Hoſpital*, all the *Socage-Lands* Deviſed to the uſe of the poor. This being the ſubſtance of the Caſe, the Queſtions hereupon ariſing upon the Appeal, were: Whether the *Deviſe* to the Charitable Uſes be good, and whether the Commiſſioners had Power to Decree the whole *Socage-Lands* deviſed, or but two parts only. It was agreed, That by the Statutes of 32 and 34 *Henry* 8. the *Deviſe* is void for a third part. But it was inſiſted upon, that although the *Deviſe* be void for a third part by thoſe Statutes, yet this is ſuch a limitation and appointment within the Statute of 43 *Eliz.* as doth well enable the Commiſſioners for Charitable Uſes to the *Decree* the whole.

Charitable Uſes good, although it be defective in the Gift.

Firſt, That it hath been generally held, That the Statute of 43 *Eliz.* for Charitable Uſes, doth ſupply all the defects of aſſurances where the *Donor* is of a

capacity to diſpoſe, and hath ſuch an Eſtate as is any ways diſpoſable by him. And upon this ground it hath been held, That if a Copyholder doth diſpoſe of Copyhold Lands to a charitable uſe, without a Surrender, or if Tenants in Tayl do convey Land to a charitable uſe without a Fine, or if a Reverſion be granted without Attornment or Inrollment, and divers other the like caſes: yet theſe defects are ſupplyed by the Statute of 43 *Eliz.* becauſe the Donor had a diſpoſing power of the Eſtate, and this is a good Limitation and Appointment within this Statute: But it is true, if an Infant, Lunatick, or any other perſon, who hath not capacity to diſpoſe an Eſtate, ſhall grant to a charitable uſe, this defect is not ſupplyed by this Statute: and this difference is reſolved in *Colliſons* Caſe, 15 *Jac.* in the Lord *Hobarts* Reports, *fol.* 136.

Secondly, the words of the Statute of 43 *Eliz.* are very conſiderable in this Caſe; for although the Statute doth give power to the *L. Chancellor*, or *L. Keeper*, upon complaint to them made, to adnull, diminiſh, alter, or inlarge any *Decree* made by the Commiſſioners for charita-

ble

ble uſes: yet the ſame is with this limitation, ſo far as may ſtand with Equity and good Conſcience, according to the true intent and meaning of the Donor and Founder thereof.

Whereby it doth appear, that in all Gifts, Appointments, Limitations and Aſſignments within that Statute, ſpecial regard is to be had to the intent of the Donor; and this power of adnulling, diminiſhing, altering, or enlarging *Decrees*, made by the Commiſſioners for charitable uſes, is appropriated ſolely to the *L. Chancellor*, or *L. Keeper*, and not to any other, and to proceed therein according to Equity and good Conſcience.

Thirdly, the Caſe of *G. L.* Hillar. 13 *Jac.* reported by the Lord *Hobart*, fol. 136. doth reſolve the point in queſtion: Where the Caſe being, that *G. L.* being ſeiſed in Fee of Lands in *Cardigan*, 1571. in *Auguſt* 25 *Eliz.* Deviſed the ſame Land to *A.* his Wife for life, and after to *J.* his Daughter for life; and after theſe lives ended, to the principal Fellows and Schollars of *Jeſus Colledge* in *Oxford*, and their Succeſſors, to find a Schollar of his Blood from time to time, and dyed: the

lives ended, *B. L.* the Heir of *G. L.* being the Kings Ward, entred, and upon a Case made hereof in the Court of *Wards*, and by Orde of that Court, brought to the Lord *Hobard*, then Chief-Justice of the *Common-Pleas*, and the Lord Chief Baron *Tanfield*, to be resolved of by them, who agreed, and so certified, that the *Devise* was void in Law, because the Statute of Wills did not allow *Devises* to Corporations in *Mortmain*; yet they held it clearly within the relief of the Statute of charitable uses of 43 *Eliz.* under the words, *limited and appointed*; and so it was *Decreed*, that the *Colledge* should enjoy it against the Ward and his Heirs.

The Case of *Collison*, 15 *Jacob.* Reported likewise by the Lord *Hobard*, fol. 136. Resolved the Point in question, Where the Case being, That *Collison*, 15 *Hen.* 8 Devised a House in *Etham* in *Kent*, to *L.* his Wife for life; and after her death, made *J. K.* and others, Feoffees (as he called them) in the said House, to keep it in Reparations, and to bestow the rest of the Profits upon the Reparation of certain High-ways there;

Collison

Colliſon and his Wife dyed, and the Houſe deſcended to *O. B.* an Infant. This Caſe being in *Chancery* between the Pariſhioners and *B.* was referred by the Court to the Lord *Hobart*, and the Lord Chief Baron *Tanfield*, who reſolved it clearly, that though the *Deviſe* were utterly void, yet it was within the Relief of the Statute of 43 *Eliz.* within the words, *limited and appointed to Charitable Uſes.*

This *Decree* was lately confirmed by the Lords Commiſſioners, Keepers of the Great Seal; for that it fully appeared to them, that it was the true intent and meaning of *A. H.* the Donor, that all the Lands in queſtion ſhould go to the Hoſpital.

CASE 41.

IN *Mich.* 14 *Jacob.* in the *Exchequer*, *Standiſh* and *Short*, in an *Ejectione Firmæ*, on a Leaſe made by the Parſon of St. *John Evangeliſt* in *London*, on a Special Verdict, the Caſe was, That a houſe in *London*, where by Cuſtome any Freeman

Deviſe expound.

man may by his Will Deviſe in *Mortmain* in Fee, in Tayl, for life, or years, *&c.* That *W. D.* [ſuch a day] was ſeiſed &c. made his Will in Writing, and deviſed the Houſe thus:

Firſt, he deviſed a Quit-Rent of 40 *s.* a year to the Parſon of St. *John Evangeliſt*, and his Succeſſors, to pray for Souls, and deviſed to the Parſon and his Succeſſors a Chamber, with two Cellars, lying on the North-ſide of the houſe, to pray for Souls; with this ſubſequent Clauſe.

Superſtitious uſes, & good uſes mixt.

Item, Lego & ordino, quod unus Capellanus celebret in Eccleſia Sancti Johannis *prædict. Statim poſt deceſſum meum pro Anima mea & Animabus prædictis, & quod idem Capellanus percipiet annuatim de tenemento meo* 8. *Marks pro ſtipendio, & volo quod idem Capellanus ad matutinas miſſas & omnibus aliis horis Canonicis in Eccleſia prædicta interſit per diſpoſitionem Rectoris ejuſdem, qui pro tempore fuerit, & de reſiduo ſi quod clarum fuerit ultra ſolutionem dict tenementi. Volo quod* Richardus *filius* Elizabethæ *uxoris meæ ſcolatizando adjuvetur quouſque ad legitimam*

ætatem

ætatem pervenit, ad ordines ſacerdotales percipiend'; & cum Sacerdos fuerit, volo quod idem Richardus *dictum Cantarium occupet pro termino vitæ ſuæ ſi voluit; Et ſi non de reſiduo tenementi prædict. Neque de cantario nihil percipiet, ſed Rector antedictus qui pro tempore fuerit, & 4. Magiſtri ſufficient. Parochiam præſentent, & invenient unum Capellanum ad dictum Cantarium occupandum in perpetuum de tenementis meis in dominica Parochia non legatis; Salvo quodlege de dictis tenement. meis Rectoribus & ſucceſſoribus ſuis illam manſionem quam J. S. modo tenet reddend. inde Annuatim tot. quiet. Reddit. de omnibus tenementis meis exeunt. Item volo quod ſi Dominica Cantuaria pro defectu dict. Rectoris, vel Succeſſorum ſuorum retardavit, & ultra 40. dies inoccupat. fuerit, quod dict. camer. ſolarii, & manſiones erunt Gardianis de ponte. Et id quod clarum fuerit, & reſiduum ultra ſolutionem & reparationem prædict. volo quod ponatur ſub cuſtode Rectoris, & 4. Parochianorum ad providend. ornamentum & libros Dominicæ Eccleſiæ.*

The

The Deviſor dyed, the ſame Dye ſeiſed of the Tenement: And they found the Meſſuage [in queſtion] parcel of one of the Tenements in the Will, out of which the Teſtator did ordain, that the Chaplain ſhould have 8. Marks for his ſtipend, and that *H. T.* was Parſon of the ſaid Church at the death of the Deviſor, and the Church void by his death; and the Leſſor was preſented, admitted, inſtituted, and inducted, and he entred into the houſe in queſtion upon the Defendant, and did expell him, and made the Leaſe to the Plaintiff, who entred, and was poſſeſt, untill the Defendant ejected him; Prayed the Opinion of the Court.

The queſtion was, Whether the Parſon by this *Deviſe* ſhould have the houſes, the ſaid 8. Marks limited, to be paid to the Chaplain, or not?

In this Caſe, it was adjudged, That the Land was not demiſed to the Parſon by this Will; and Judgment given for the Defendant. *Bridgmans Rep.* 106.

CASE

CASE 42.

IN *Hill.* 7 *Car.* B. R. In *Lancelot* and *Allen*'s Caſe, in Treſpaſs on a Special Verdict, the Caſe was this: That one *C.* was ſeiſed in Fee of the houſe in queſtion, in St. *Swethins*, and other houſes in St. *Olives* in *London*; and the Cuſtome was found, (as in the laſt Caſe.) And he deviſed the houſe to the Parſon of St. *Martins Orgars*, and his Succeſſors, to find yearly one to ſing Maſs in the Church of St. *Orgars* every day, and that there ſhould be paid unto him Ten Marks by the year. And he deviſed the houſe in queſtion to his Wife for life, to find an Anniverſary, and expend thereupon divers ſums, amounting to 3 *l.* 6 *s.* 8 *d.* and afrer her death, to the Parſon and his Succeſſors, finding the ſaid Anniverſary. And further appointed to the Church-Wardens 6 *s.* 8 *d.* for their pains, to ſee it obſerved. *Et quod ſuper fuerit*, over and above the ſaid Charges,

Deviſe Expound.

Superſtitious uſes, & good uſes mixt.

Charges, he wills shall remain in the hands of the Church-Wardens of Saint *Martins Orgars*; *Ad manu-tenendum Capellanum prædictum, & ad emendandum & reparandum dictam Ecclesiam de* St. Martins Orgars, *& Ornamenta ejusdem Ecclesiæ secundum eorum discretionem. Proviso semper, quod si contigerit prædict. terras & Tenementa in St.* Swethins, *in aliquo casu fore minoris valoris quam decem* Marcis *per quod Capellanus prædictus, ut prædictum est inveniri non poterit, tunc volo quod totum, quod de prædicta annuali summa de decem* Marcis, *haberi & levari non poterit, haberetur & levaretur de proficuis tenementorum prædictorum in St.* Olives, by the said Parson and his Successors; *ad opus & sustentationem dicti Capellani in perpetuum.* And they found, that the Tenements in St. *Swethins*, at the time of the Will making, and before, were but of the yearly value of 6 *l.* 5 *s.* And the Tenements in St. *Olives*, at the time of the Will, and always after, untill the time of the Statute of 1 *Ed* 6. were of the value of 24 *l.* 10 *s. per annum*; and that the Priest, and the said other uses, were employed and maintained, untill the making

of

of the ſaid Statute of 1 *Ed.* 6. And that the Plaintiff claimed as Leſſee of the Parſon, and the Defendant claimed under the Patentee of the King. And whether the Parſon of St. *Martins Orgars* had Title to the Tenements of St. *Olives*, was the queſtion. And it was held by all the Court, That if this Proviſo had not been added, the Lands had been clearly given to the King, by the Statute of 1 *Ed.* 6. as Lands given for the maintenance of a Prieſt. For the Clauſe for thoſe Lands of St. *Olives* was limited, *Quod ſuper fuerit*, after the Anniverſary maintained ſhall be *ad manu-tenendum Capellanum predictum, & reparandum Eccleſiam & ornamenta ejuſdem Eccleſiæ*, the Superſtitious Uſes being certain; and the good uſe (*viz.*) *ad reparandum Eccleſiam & Ornamenta ejuſdem Eccleſiæ*, uncertain; the Superſtitious Uſe certain, ſhall cauſe that all ſhall be given to the King. But *Richardſon* Chief-Juſtice, *Jones*, and *Whitlock* conceived, that by the Proviſo it appears, it was his intent the Prieſt ſhould have but 10 Marks; and what was wanting in the value thereof, ſhould be ſupplyed out of the Tenements in St. *Olives*:

So

So that nothing was given to the Prieſt, but the 10 Marks; therefore the Land of St. *Olives* was not given to the King. But *Crook* Juſtice doubted thereof, and conceived all to be given to the King; for the Proviſo doth not alter it. For in the firſt Clauſe, all the profits of thoſe Lands, after the Anniverſary found, is given for the maintenance of a Prieſt indefinitely, and to the Reparation of the Church, &c. And the Proviſoes doth not abridge it: For that appoints, what is wanting in St. *Swethins*, ſhall be made up out of S. *Olives*; and ſo to pay the 10 Marks firſt appointed, ſo as he ſhall have the 10 Marks, *de certo*, out of both the ſaid Tenements in S. *Swethins*, and S. *Olives*. But that doth not take away the Clauſe, that the reſidue of the Profits of the Tenements in St. *Olives*, ſhall be to the Perſon, *ad ſuſtentationem dicti Capellani*, And of this Opinion was *Hide* Chief Juſtice when he lived. But it being moved again in Sir *Tho. Richardſon*'s time, he agreeing with *Jones* and *Whitlock* in their Opinions, it was adjudged for the Plaintiff; That this Land was not given to the King. *Cro. Rep.* 1. 180, 181.

CASE

CASE 43.

IN *Hill.* 37 *Eliz. Rot.* 715. Between *Partridge* and *Walker*, in the King's-Bench, the Case was; one *Hill* devised houses in *London*, to the Parson and Church-Wardens of the Church of St. *Brides*, to find for ever his Anniversary, appointing upon it 20 *s.* and to pay to the Poor 5 *s.* 6 *d. in honorem & duplicationem annorum in quibus Christus vixit in terra.* And it was adjudged, that the Land was not given to the King; for the last payment was good, *Coo.* 4. 116.

Devise. Mixt uses. Charitable uses. Superstitious uses.

CASE 44.

PAsch. 2 and 3d *Ph.* & *Ma. Rot.* 186. in the Kings-Bench, *Whetston*'s Case; It was adjudged, That where Lands were given to find an *Obit* in such a Chappel, appointing a certain sum upon it, and that the residue should be employed for

the reparation of the Chappel, in which the *Obit* should be celebrated. In this Case it was adjudged, that all the Land was given to the King, for the one doth depend upon the other. And by *Popham* this Case cited, *Pasch.* 10 *Eliz. Rot.* 398. one *Drayton* seised of Lands in Fee in *London*, devised it to the Dean and Chapter of *Pauls*, on condition that they find two Chaplains to pray for his Soul in a Chappel newly built by him, and to pay to them for their Salary 13 *l.* 6 *s.* 8 *d.* and to find an *Obit*, appointing upon it a certain sum, and to repair the Chappel, and this found within the 5 years: yet it was adjudged against the King.

Charitable and Superstitious uses

CASE 45.

IN *Trin.* 30 *Eliz. Rot.* 709. Between *Adams* and *Stakes*, in the King's-Bench, the Case was on a Demurrer. *William Dunston* devised Land to the Parson and Church-wardens of St. *Botolphs*, on condition to find a Priest, and that he have for his Salary 6 *l.* of the Issues and Pro-

Mixt uses.

Profits of his Lands deviſed. Alſo he deviſed yearly for ever to the Priſoners of *Newgate* and *Ludgate* 13 *s.* 4 *d.* at the day of his death, to pray for his Soul, beſides the ſaid ſole Prieſt; the reſidue for the reparation of the Tenements, and augmentation of the Prieſts portion. And the Land was given to the King. For praying for, although it were out of a Church or Chappel, was ſuperſtitious, and the augmentation of the Prieſts maintenance incertain. *Coo.* 4. 116.

Charitable, and Superſtitious uſes.

CASE 46.

IN *Trin.* 20 *Eliz. Rot.* 589. Between *Colborn* and *Dale* in the Kings-Bench, on a Demurrer, the Caſe was: *Thomas Wills*, 12 *Ed.* 4. deviſed houſes in *London*, worth 24 *l. per annum*, to his Wife for life, the remainder to the Parſon and Churchwardens of St. *Edmonds*, and their Succeſſors, and deviſed, that his Wife, during her life, and they in remainder, ſhould find a Prieſt to ſay Divine Service, at the Altar in the Chappel of our Lady in the

Church of St. *Edmonds*, for the Souls, &c. And that the ſame Prieſt ſhould be aiding and aſſiſting to Divine Service in the Church; And that his Wife, for her life, and they in remainder after, ſhould pay to him for his Salary 6 *l.* 13 *s.* 4 *d.* Further he deviſed, that they found with ſix Prieſts, and appointed 22 *s.* certain, to be imployed upon it; whereof part to be diſtributed amongſt the Poor of the Trade of Drapers, which ſhould come to the ſaid *Obit*, and could not come. Alſo, he appointed 16 *d.* yearly to the Parſon of St. *Edmonds* for the beading of Beads; every *Sunday* 3 *s.* 4 *d.* to the *Fryers* of St. *Auguſtin*, to pray for his Soul. Alſo, 4 *s.* yearly to be paid to the *Preacher* at *Pauls* upon *Good-Friday*. To three *Preachers* at the *Spittle*, to commend his Soul to the Prayers of the People, 13 *s.* 4 *d.* Alſo, 3 *s.* 4 *d.* to the Wardens of the Company of *Sheermen*, to diſtribute amongſt the poor Alms-men of that Trade, to the intent, that thoſe of the Wardens, with 8. or more of the ſaid Company, upon warning, ſhould come to his *Obit*. Alſo he appointed Accompts yearly to be taken; and that the Church-wardens

Superſtitious uſes.

wardens of St. *Edmonds* ſhould have the letting and ſetting of his Lands; and the Church-wardens of St. *Mary Woolnaugh* ſhould come yearly, and have for their pains 6 *s.* a piece; and the Church-wardens of St. *Edmonds* to have 6 *s.* 8 *d.* And 11 *s.* 4 *d.* yearly he appointed for the finding of Books and Ornaments, and Veſtments of the Chappel, where he appointed his *Obit* to be celebrated: And that all the Revenue coming of the Premiſſes, ſhall be in ſeveral keeping, ſeparated from other moneys, in a Cheſt, for the Reparation and new building of the Tenements: And it was adjudged, that the houſes were given to the King: for all the Uſes were either Superſtitious, or were depending upon the Superſtitious Uſes; or tending to the maintenance and continuance of them. *Cook.* 4. 116.

CASE 47.

IN *Adams* and *Lambers* Case, *Coo.* 4. These things amongst, others were Resolved:

Superstitious use.

1. That if *A.* Devise to any of his Kindred to Superstitious Uses; and though he had limited them to pay certain Sums of Money to those Uses, yet are those Lands given to the King: No other Consideration shall be supposed, but that which they in those times thought to be the Service of God. This was the most worthy Consideration, and reason, for which the Devise was made to Friends; more trust was imposed in these, then in others: Therefore were these pick'd out, and therefore the persons are not to be regarded.

2. Devise of an Estate for Life, or in Tail, as within the Statute by Equity, though it says, *To have continuance for ever*; The intent of the Statute, was, to extinguish those Uses; it regards not the time of their continuance. 2. Estates Tail may continue for ever; and this was the intent of the Devisor, that the Uses should con-

continue for ever; for here, when it is come to him, is to do as much; without this Conſtruction the Statute would be eluded.

3. The Statute wills, That Lands aſſigned for the finding of a Prieſt, &c. belong to the King, then to give Lands on Condition to find a Prieſt, muſt be within the Statute, as more compulſary then the other.

4. The whole Land was given to the King, but not by the firſt Branch; that extends only to lawful Chantries, or ſuch as have the countenance of a lawful beginning; not to to thoſe that want the colour of ſuch lawfull beginnings; as where the Popes Licence layes the firſt Stone. This is a Chantrie without colour of a lawful Foundation; ſo where the Gift is to find a Chantrie without a Corporation, this is out of that Branch. Now by the ſecond Branch, that gives the Lands belonging to ſuch Colledges to the King, without which only the Scituation had been his. By the third Branch, which reaches to the finding a Prieſt without Corporation. It was ſaid, That the Land was not given to the finding a

Prieſt, only a Penſion was appointed him out of it; and the Statute ſpeaks thus, *The King ſhall have it in large, &c. as the Prieſt had*; then that a good uſe was limited, 6 d. Weekly, to ſix poor men; and though he added, To pray, &c. this is not prohibited, for none but publick Prayers are within the Statute: Anſwered, with theſe differences, If 20 l. be given yearly to find a Prieſt, though his ſhare is to be but 10 l. by the year, all is given to the King, the reſt ſhall be intended to find Neceſſaries: Otherwiſe, if a Condition were fixed to the Gif of 10 l. the year, there the King ſhall not have more then the 10 l. Secondly, 20 l. the year aſſigned, 10 l. to find a Prieſt, and the other 10 l. to the Poor, the ſame; were it generally to find, &c. And for maintenance of poor men, without limitation what the Prieſt ſhall have; the King muſt have the Land or nothing; 3. 20 l. Land, &c. for the Sallary of a Prieſt 10 l. ſome other Neceſſaries are to be found in certain. A good Uſe limited over, the King ſhall not have more then 10 l. a good Uſe in certain ſhall be preſerved before a Superſtitions Uſe in certain;

tain; if nothing be limited in certain to the Priſt, the King has all; 4. If only a ſtipend be limited, no more but the ſtipend: 5. After the ſum to the Prieſt Uſes follow, not forbidden, but depending upon the Superſtitious Uſes, nothing ſhall be preſerved: 6. So there be what certainty there can be, if they be all Superſtitious; the words, *In as large, &c.* They refer to the firſt, ſecond, and fourth Branches, not to the third, elſe the King ſhall never have the Land it ſelf, which was never limited to the Prieſt; and though the Prayers were to be made out of the Church, it is within the Statute. The words *Church* or *Chappel* extend to *Lamps* and *Lights*, not to *Prayers*; It ſays, anniverſary, or like thing; and this is like thing, in the bare Caſe: Theſe words, *That his Friends ſhould have the reſidue of the profits of the Land*, had ſaved the Land. *Cook* 4. Part, 104. And in this Caſe, the Caſes of *Hewet* and *Wotton*, and *Chibnall* and *Wotton* were agreed to be good Law for two Cauſes in the Judgments of them, 1. Becauſe nothing was limited to the Prieſt, but 2 d. or 3 d. a Week, which

Good uſes.

is

is not within the Act; for ſuch petit things cannot find or maintain a Prieſt, as the words of the Act are. And in one of the Caſes, he ſaid not Maſs every Sunday, and Dirge once a year, which is within the Clauſe of *Obits*, to ſuch like intent or purpoſe. (2.) Admit there had been a ſufficient maintenance for the Prieſt, yet becauſe there were good Uſes, ſeperate and divided from the Superſtitious Uſe, (*vizt.*) in the one Caſe 3 s. 4 d. for the Poor, &c. And in the other, to find Ornaments in the Church; for theſe cauſes, Judgment was given, that the Land was not given to the King. Alſo it was adjudged for theſe Reaſons in *Hewets* Caſe, That the King ſhould not have the Land; (1.) Becauſe the Land it ſelf was not given to find a Prieſt, (and ſo not within in the third Branch of the Act) but to find an annual Suſtentation of 10 Marks for a Prieſt, which is within the fourth, and not the third Branch. And it was Reſolved, That in the Caſe of the Dean of *Pauls* (touched by *Dyer*), That if Land be given to pay 10 Marks to a Prieſt, and 40 s. to the maintenance of an *Obit*; In this Caſe, if both be found

Mixt uſes.

found within the five years, the King will have all the Land. But in that Case, because the *Obit* was not found within the five years, the King could not have the Land. And therein this difference was taken, where certain Sums are limited to Superstitious Uses, and one Use is seperate and divided from the other; there the finding of one will not give all the Land to the King, but onely the Sum appointed to the Superstitious Use, which was imployed within the five years. But if the one Use depend upon the other, there the finding of the principal, or any part thereof, giveth all the Land to the King. As where Land is given to the intent, that an *Obit* shall be in such a Curch or Chappel, and that upon the *Obit* 10 s. shall be imployed and distributed to the Priest, and to divers poor persons, who shall be present at it 6 s. 8 d. and the rest of the profits to the reparation of the Church or Chappel; in this case, if the *Obit* be maintained with any part within the five years, albeit the 6 s. 8 d. be not imployed to the poor men, nor any thing upon the reparation of the Church or Chappel within

within the five years, yet all the Land will go to the King. So where certain Houſes, called the *Bull*, were given to find a Prieſt to pray for Souls, &c. and other Tenements, called the *Swan*, were given to the ſame Feoffees to find an *Obit* to the ſame Feoffees; and the Feoffees imployed the profits of the ſeveral Houſes to contrary Uſes, (*viz.*) the profits of the *Bull* for the *Obit*, and the profits of the *Swan* for the Prieſt; by this all is given to the King, *Cook* 4 part, 115. So, if one give the Mannor of *Dale* and the Mannor of *Sale* to find Superſtitious Uſes, and they with the profits of one Mannor find the Superſtitious Uſes, and imploy the profits of the other to the uſe of the poor Inhabitants of the Town, or to bear the Common Charges of the Town; yet both Mannors are given to the King. But if the Feoffees had before the five years conveyed part of the ſame to another in Fee, and imployed the Land, only that remaining in their Hands and none of the other Land for the Superſtitious Uſes within the five years, there the King ſhall not have the Land of the ſecond Feoffee. And in Trin. 18 *Eliz.* The Caſe was,

them,

A. ſeized of Houſes in *London*, Deviſed them, 3 H. 6. upon Condition to find an *Obit* of 41. 6 s. 8 d. within the Pariſh of St. *Mary Patents*, in *London*, ſpending thereat ſo much as the Diviſees would in their diſcretions, and they expended on the *Obit* only 6 s. 8 d. *per ann.* 1. And it was adjudged, The Queen ſhould have the Houſes; for the Appointment was incertain, albeit the Imployment was certain. 2. That all the Uſe expreſſed was Superſtitious; And therefore it was ſaid, That if Land to the value of 51. be deviſed to find an *Obit*, ſpending upon it 3 l. *per ann.* In this Caſe, albeit a certain Sum is given, yet becauſe the Land is given to that Uſe, and no other Uſe expreſſed; it will all go to the King, *Cook* 4. part, 115.

CSAE

CASE 48.

Superstitious uses.

IN *Pasch. 9 Jac.* in the *Exchequer*, the Case was thus; *Edward Wickham* declared in an *Ejectione Firme*, That *Skeeen*, 17 *April*, 6 *Jac.* at *Feamlingham* in *Suffolk*, Demised to him 30 Acres of Pasture to have for 3. years, &c. And upon the general Issue pleaded, the Jury found, That *Thomas Cooper* and three others were seised of the Lands in Question; and the 5th of *February*, 24 *H.*8. enfeoffed by Indenture *M. B.* and five others to the Uses and Intents mentioned in a Schedule annexed; and that was upon Condition, That if they aliened to any other uses or purposes, that the Feoffor should Re-enter. And the Jury also found the Schedule, which in effect was this; *viz.* That the Feoffees and their Heirs should take the Profits, and therewith find an honest Priest; by them or the greater number of them to be hired, and competently paid to say Mass for the Souls of the Feoffor and his Friends, and that

that by the ſpace of 99. years then enſuing: And at the end of the ſaid years, the Feoffees their Heirs and Aſſigns, who then ſhould be ſeiſed, ſhould ſell the Lands, and with the Money find a Prieſt to Chaunt for the Souls aforeſaid; and with the ſame Moneys or Lands alſo, to make further Proviſion for a Competent poor honeſt Prieſt for the time being (if then it could be) by Amortization, or otherwiſe, as they ſhould think beſt, for the ſure and long continuance of the ſaid honeſt Prieſt, if ſo it could be continued by Order of Law: The Jury found all things executed accordingly, and the finding of a Prieſt from the 24 of *H.* 8. untill the firſt of *Edw.* the 6th: By which Act, the King was Intituled, *Prout Lex poſtulat.* and that Queen *Eliz.* granted to *Mildmay* for 21 years, upon whom *Fuller*, the Heir of the Surviving Feoffee entred, and made a Feoffment to *Wilbey* and *Skreen*, by force whereof they were ſeiſed, and *Mildmay* re-entred, and his Term expiring, he obtained a new Leaſe, 43 *Eliz.* and made a Leaſe to *Wood*, and *Skreen* ſurvived *Wilbey*, and made a Leaſe to *Wickham*, who entred; and being outed by

by *Wood*, brought this Action: And so Judgment was given for the Plaintiff, against the Opinion of *Altham*. The Case of *Wickham* and *Wood*. *Lanes* Rep. 112, 113.

CASE 49.

SIr *John Tate* seised of Houses in *London* in Fee, and Devised them by his Will to the Company of *Dyers*, to repair the Houses, and find a Secular Priest for ever, to pray for Souls in the Church of St. *Michael* in *Cornhill*, paying to him a competent living, no lesse then 8. Marks by the year; and the houses then were of greater value: And yet because it was incertain what Sum the Priest should have; and if the same had been certain, yet because the Land was given to find a Priest, and no good Use limited, the King will have all, by the third branch of the Act, *Coo.* 4. 113.

CASE

CASE 50.

ONe *Walpool*, *M.* 23 *Ed.* 3. by his Will in Writing Deviſed houſes in *London* worth 30 l. *per annum*, to the Company of *Goldſmiths*, to the intent, that they with the Iſſues and Profits therof, ſhould find two Prieſts, paying to each of them 6 l. 13 s. 4 d. for his Salary: In this Caſe it was Reſolved, That the Queen ſhould have the houſes. *Coo.* 4. 113.

CASE 51.

ONe *Pele* Deviſed by his Will in Writing, certain houſes in *London*, to the *Cloth-workers* in *London*, to the intent that they for ever ſhould pay to ſuch Prieſt who ſhould pray for his Soul in the Pariſh Church of *Chilham* 9 l. 6 s. 8 d. for his Salary. In this Caſe, the King will not have the Houſes, for they are not given to find a Prieſt, but to pay a Prieſt a certain Sum. *Coo.* 4. 13.

CHAP. VII.

Of Charitable Uses.

TO give you now a brief Account of all that is before laid down, and to make Additions of some other things necessary to be known for the further Exposition of the Statute of 43 *Eliz.* Chap. 4. And for the further opening and clearing of our Subject matter in hand, we are to know; That there are these three things mainly considerable therein, and to be spoken unto:

1. What shall be said to be a Charitable Use within the Intent and Purview of this Statute.

2. What shall be said a Mis-imployment of such Charitable Use.

3. What is to be done in case of such Mis-imployment, for the redresse thereof.

And

And in the firſt of theſe, we ſhall ſhew what is not; And then what is a Charitable Uſe; and under it we ſhall have occaſion to ſhew what a Superſtitious Uſe is.

And in the laſt of theſe, we ſhall have occaſion to conſider of the Commiſſion it ſelf for Charitable Uſes: And therein, 1. Of the making. 2. Of the Execution; and then proceed in the Execution of it from the beginning to the end. And therein we ſhall ſet forth, how the Commiſſioners for this Uſe are to proceed: Wherin hey are to intermeddle, & wherof they are to enquire; And how. And what the Jurors that are before them are to do therein; what Order or Judgment they are to make, and how they are to certifie it. What courſe the Party grieved therewith is to take for his relief. What the *Lord Chancellor* or *Lord Keeper* of the Great Seal, or *Chancellor* of the *Dutchy* may do thereupon. And what Remedy is againſt their finall Decree, if it be diſliked.

SECT. I.

What ſhall be ſaid to be a good Limitation or Appointment by Deed or Will to a Charitable Uſe, to be relieved by the Statute of 43 Eliz. Chap. 4.

IN this we are to know, That a Charitable Uſe may be raiſed by a Deed in Writing, by a Will, by a Contract, or by a Limitation, or Appointment ſome other way.

Part 1. But for the firſt of theſe Queſtions; *What ſhall be ſaid a good Charitable Uſe within the Purview of this Statute of* 43 *Eliz.* Chap. 4.

We ſhall open this, firſt negatively, by ſhewing what is not a Charitable Uſe, albeit it may look ſomewhat like to it.

And then Affirmatively and Poſitively, by ſhewing what is, and is to be accounted, a Charitable Uſe within the Intent and meaning of this Statute.

For the Firſt, What is not a Charitable Uſe, we are to know, That if any Mannors,

Mannors, Lands, Tenements, Rents, Annuities, Penſions, Profits, Hereditaments, Goods, Chattels, Money, or Stocks of Money have been, or ſhall be given, limited, appointed or aſſigned to have continuance for ever, or for a time only, towards or for the finding, or maintenance of a ſtipendary Prieſt; or for the maintenance of an Anniverſary or *Obit*, or of any Light or Lamp in any Church or Chappel, or any like intent; Theſe and ſuch like Gifts and Diſpoſitions as theſe, are not to be accounted Charitable Uſes (intended by the Purview of this Statute), but Superſtitious Uſes intended by the Statute of 1 *Ed.* 6. Chap. 14. What is diſpoſed and ſetled in any ſuch courſe, is forfeit and given to the King.

Part 2.

And therefore if at any time heretofore any ſuch thing hath been given, or hereafter ſhall be given by any man by his laſt Will, at his Death, or by Act executed in his life-time to any perſon ſole or Corporate in Fee-ſimple, Fee-tail for life or years, to the Intent, or upon Condition to find a Chaplain, and have the Service of a Prieſt to ſay Maſs, or to

Superſtitious uſes.

have a Prieſt or other man to pray for the Soul of any dead man in ſuch a Church or other place; or to have or maintain perpetuall *Obits*, Lamps, or Torches, &c. to be uſed at certain times to help to ſave the Souls of men out of the Suppoſed Purgatory; Theſe and ſuch like Uſes as theſe are not, nor ſhall they be ſaid to be Charitable Uſes within the Intendment of the Statutes made and provided for the preſervation and execution of ſuch Uſes. For theſe are looked upon and accounted in Law for Superſtitious Uſes. And therefore all theſe and ſuch like Uſes as theſe are void. And the Lands ſo given to ſuch Superſtitious Uſe, are by other Statutes given and forfeited to the King, and he ſhall have them. And yet ſo, That if there be any Charitable uſe intermixed with the Superſtitious uſe, and they may be diſtinguiſhed, there the King ſhall have only ſo much as is given to the Superſtitious uſe, and not that which is given to the Charitable uſe alſo. And for this, ſee *Coo.* 4. 104. *Adams* and *Lamberts* Caſe. Stat. 15 *R.* 2. chap. 5. 37 *H.* 8. chap. 4. 1 *Ed.* 6. chap. 14. *Croo.* 1. Part. 180.

Bridgm.

Bridgm. Rep. 105. *Croo.* 2. Part, 51, 52, *Coo.* 4. 104. Where (to our present purpose) these things are agreed upon, 1 *Ed.* 6. 14.

1. That if *A.* Devise to any of his Kindred to Superstitious Uses, and though he hath limited his Kindred to pay certain Sums of Money to those Uses, yet these Lands are given to the King. But if it be so limited, that his Friends shall have the residue of the Profits above the Superstitious use, this h'd saved the land. *Part* 3.

2. That a Demise for life, or Gift in tail, may be within the Statute to raise a Superstitious Use.

3. That the giving of Lands upon Condition to find a Priest, is to a Superstitious use, within the words [*Lands given for the finding of a Priest.*]

4. That if one give 20 l. *per ann.* for the finding of a Priest, and appoint to the Priest 10 l *per annum*; In this Case all shall go to the King, for the residue shall be intended for the finding of necessaries. Otherwise it is, if a Condition be annexed to the Gift, to give 10 l. *per annum* to a Priest, for there the King shall have but 10 l.

5. If Land of 20 l. *per annum* be given

to find a Prieſt with 10 l. thereof, and that the other 10 l. ſhall be to the Poor; In this caſe the King ſhall have but 10 l. But if it be for the finding of a Prieſt, and maintenance of poor men, without ſaying how much the Prieſt ſhall have; In this caſe the King will have all.

6. If Land of 20 l. a year be given for finding Salary for a Prieſt with 10 l. of it, and there is alſo another good Uſe limited with it; there the King will have but 10 l. although the other neceſſaries are to be found for the Prieſt: for a good Uſe in certain, ſhall be preferred before a Superſtitious incertain uſe. But if nothing in certain be limited to the Prieſt, all the Land will go to the King.

Good uſes ſhall be preferred.

7. If Land be given to find a Prieſt, the King will have it; but if a Prieſt have but a ſtipend out of the Land, the King ſhall have but that ſtipend.

8. When a certain Sum is limited to a Prieſt, and other good Uſes are alſo limited which depend upon the Superſtitious uſe; all in this caſe is given to the King.

9. If all the Uſes be ſuperſtitious, of what certainty ſoever they are, the whole Land is given to the King. Otherwiſe it is, if there be any good Uſe. 10.

10. That Prayers for the Dead out of, as well as in a Church or Chappel, may make the Use Superstitious. *Part* 4.

11. That other like things to these may make the use superstition, and put the Land charged with it into the Kings hands. See much more to this purpose, in *Adams* and *Lamberts* Case. *Coo.*4.104. *Superstitious uses.*

12. Where one Devised Money to a Dean and Chapter, to the intent to find a Chantery in their Church perpetually, and an *Obit* for the Soul of the Donor, and that the Chauntry Priest should have 40 Marks yearly, &c. the 400 l. was paid, and the King gave Licence to them to purchase Land to that use; which they did, and made Ordinances for the settling of the Service; the Dean and Chapter laid out money for the maintenance of a Priest and an *Obit*: In this Case it was ruled by the major part of Judges, That this was no Chauntry in fact, nor in reputation, and therefore not given to the King by the Statute of 1 *Ed.* 6. for in this case no Lands were given by the Founder, and the Dean and Chapter made no Chantry, nor appoint any Lands thereto, but bound their Goods to pay a yearly Sum

to

to the Prieſt &c. And that which was paid, was not paid out of the Land only, but out of all their poſſeſſions. And in caſes where no Lands in certain are given to ſuch ſuperſtitious purpoſe, nor imployed for that purpoſe, there will be no forfeiture of it to the King, nor may have it. *Croo.* 2. Part, 51. *M.* 2 *Ja.* C. B. *Holloway* and *Watkins* Caſe.

13. If Lands to the value of 14 l. a year be given to a Dean and Chapter to pay 10 Marks a year to a Prieſt to ſing, &c. and the other profits for an *Obit*, and they maintain the Prieſt with 10 Marks, but the *Obit* was not obſerved within 5. years of the Statute: In this caſe, the Rent of 10 marks is only given to the King, and not the Land, by 1 *Ed.* 6. for the Land is the Dean and Chapters. *Dyer* 368.

Mixt Uſes.

Charitable Uſes.

14. In *Croo.* 1. Part, 180, 181. It is Reſolved, That Lands given to the maintaining of a Prieſt to ſay Maſs &c. and he to have yearly 3 l. 6 s. and that what ſhall be above, ſhall go to the repairing of the Church; That this is not given to the King, by 1 *Ed.* 6. chap. 14. See for this, Chap. 6. Caſe 7.

15. That

15. That ſuch like Uſes, as are theſe *Superſtitious Uſes*, and are not judged to be *Superſtitious Uſes* in Law, theſe will probably happen to be *Charitable uſes*, within this *Statute*.

Part 5. Charitable uſes, what.

And in all Caſes generally, the Uſes will be good *Charitable uſes*. And there Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money, and Stocks of Money, ſhall be ſaid to be given to *Charitable uſes*, where they are given, limited, or appointed by Act, executed by the party in his life-time; or by his laſt Will and Teſtament at his death, or otherwiſe, for the relieving, maintaining, repairing, educating, preferring, ſupporting, aiding, helping, redeeming, and eaſing, in the Caſes hereafter mentioned, *viz.*

For Relief of aged, impotent, and poor people: Or for maintenance of Sick and maimed Souldiers and Mariners. Or for the erecting or maintenance of Free-Schools, or other Schools of Learning. Or for the maintenance and help of Scholars in the Univerſity. Or for or towards a Relief, Stock, or Maintenance, for Houſes of Correction. Or for repair of Bridges, Ports,

Ports, Havens, Cauſ-ways, Churches, Sea-Banks, and High-ways, or either of them. Or for the educa ion and preferment of Orphans. Or for the Marriages of poor Maids. Or for the ſupportation, aid, and help of young Trades-men, Handycrafts-men, and perſons decayed. Or for Relief or Redemption of Priſoners or Captives. Or for aid or eaſe of any poor Inhabitants concerning payment of *Fifteens*, ſetting out of *Souldiers*, and other *Taxes*. Where any thing is given to any ſuch Uſe as this, this will be a *Charitable Uſe*. See for all theſe the *Statute* it ſelf; of 43 *Eliz. chap.* 4. and Stat. 1 *Ed. 6. chap.* 14. *Chap. 6. Caſes* 5, 6, 8, 10, 15, 17, 19, 27, 30.

Other Proviſions, Gifts, and Limitations there are, which ſeem to be within the Intent and Purview of this *Statute* alſo: And therefore it ſeems, that an Aſſignation of Lands, to continue in ſucceſſion to a *Preacher*, for the keeping up of *Preaching*, as well as to a *School-Maſter* for the keeping up of a *School*, is within the Account of *Charitable uſes*. See for this *Statute* 1 *Ed. 6. Chap.* 14. So the Endowment of a *Vicarage*, for the increaſe of the *Miniſters* maintenance, ſeems to be

a

a uſe of this nature. See for this Stat. 1 *Ed.6. chap.*14. And it hath been Ruled and Decreed, That Money given to maintain a *Preaching Miniſter*, is a *Charitable Uſe*; that is within the Equity of the Statute. See it *Caſe* 35. of *Chap.*6. So to maintain a *School-Maſter* in a Pariſh, &c. See for this *Chap.*6. *Caſe* 7. So for the ſetting up of an *Hoſpital* for the relief of poor People, is a *Charitable Uſe*, within the Equity of the Statute. See for this *Chap.* 6. *Caſe* 38, 40. So for the King to Found a *Free-School*, and make it a Corporation of Guardians, Maſter, and Uſher, to give Chantery to them and their Succeſſors, to maintain them, and certain poor people under them. See for this *Chap.*6. *Caſe* 39. So for the Building of a *Seſſions-houſe* for a City or County, the making of a new, or repair of an old Pulpit in a Church; or the buying of a Pulpit-Cuſhion, or Pulpit-Cloth; or the ſetting up of new Bells where none are, or amending of them where they are out of order.

Theſe and ſuch like Proviſions, Gifts, and Limitations, ſeem to be reckoned as *Charitable Works*, by the Judgment of the Law:

Law: And (as it ſeems) what is given to any ſuch uſe, ſhall be under the Surveigh, and within the Intent of this Statute, to be ordered by Commiſſioners for *Charitable Uſes*. See for this, *Popham Rep.* 139. And that the Statute is taken by Equity in this, ſee *Chap.* 6. *Caſe* 35.

But this we are to take, as out of queſtion; That a Diſpoſition of Lands, Rents, Money, Goods, &c. may be by Act executed in a man's life-time, or by his Will at his death, to *Charitable Uſes*, within the Intent and Purview of this Statute, and under the Power of Commiſſioners for *Charitable Uſes* to Order and Decree; albeit there be defect in the Deed, or in the Will, by which they were firſt created and raiſed; either in the party truſted with the Uſe, where he is miſnamed, or the like, or in the parties for whoſe Uſe, or that are to have the benefit of the Uſe, as where they are not well named, or the like; or in the execution of the Eſtate, as where Livery of Seiſin, or Attornment is wanting, or the like. And therefore if a Copyholder doth diſpoſe of Copyhold-Land to a *Charitable Uſe* without a Surrender, or a Tenant in Tayl convey Land to a *Charitable Uſe* without

Gifts not good in Law, yet good to this purpoſe.

without a Fine, or a Reversion be granted without Attornment, or Inrollment; and in divers such like Cases, where the Donor is of capacity to dispose, and hath such an Estate, as is any ways disposable by him, this Statute shall supply all the defects of Assurance; for this is a good Limitation and Appointment within the Statute. See for this, *Chap. 6. Case* 40.

Infant Lunatick or Feme-Covert.

And yet if an Infant Lunatick, or Feme-Covert, do by Will, or by Deed, give any thing to such Use, this will be void, and is not to be ordered good by the Commissioners: And if it be so, the Lord Chancellor will vacate it. See for this, *chap. 6. Case* 17, 37, 40. *Hob. Rep.* 136.

Part 6.

But it hath been agreed and resolved, to be within the Intent and Purview of this Statute, and under the power of Commissioners upon the same; and upon Appeal, the Lord Chancellor, &c. to Order and Decree the same as *Charitable Uses*, in all the Cases hereafter following; *that is to say*, Where one gives 20 *l.* a year to a Preaching Minister, leaving Lands and Goods enough to do it.

Charitable uses.

See

See for this *chap.* 6. *caſe* 35. So where one gives Land to the Church-Wardens of a Pariſh, (who by Law are not capable to take it by Grant) to *Charitable Uſes.* See for this, *chap.* 6. *caſe* 33.

So to a Corporation to ſuch Uſes by a wrong name. See this *chap.* 6. *Caſe* 37.

Rent-ſeck. So where a Rent-ſeck is given to a *Charitable Uſe.* See for this, *Caſe* 15. in *chap.* 6.

So where Land is given to repair Highwayes, to the Pariſhioners of *Dale.*

Mixt uſes. So if Land be given for relief of Poor; and alſo that the School-Maſter or Poor ſhall pray for the Donors Soul; In this Caſe it is ſaid, that the *Charitable Uſe* is the principal, and that this ſhall preſerve the Land. See for this in *chap.* 6. *Caſe* 7. *Croo.* 1. 180, 181.

So if a *Deviſe* be of Copyhold Land, to ſuch a uſe, and this be done without any Surrender, this will be good as an Appointment and Limitation within the Statute, and may be Decreed by the Commiſſioners. See for this, *chap.* 6. *Caſe* 14, 15, 16.

And

And if it be an Entail of the Copyhold Land, and a Recovery to be ſuffered within the manner, according to the Cuſtome, and there be a defect in the Recovery, and this is to *charitable uſe*; this will be a good Diſpoſition within the Statute, and may be ordered by the Commiſſioners accordingly. See for this, *chap. 6. Caſe* 17, 25, 28. *Copyhold-Land.*

If one with his own money purchaſe Copyhold-Land in the name of two of his Children within age, and by his Will doth deviſe a Rent of 40 *s.* a year out of this Land, for relief of the Poor of the place, to one and his Heirs, and takes the profits of the Land all his life: In this, albeit there be no Surrender, and the Deviſe, *Rigore juris*, be void; yet this is a good Diſpoſition, to this purpoſe, for the Rent, and may be Ordered by the Commiſſioners. See for this *chap. 6. Sect.* 3.

So if one have ſet up an Alms-houſe, that hath Land he lets for 10 *l.* a year, worth 40 *l.* a year; and he by his Will deviſeth the Rents of that Land for maintenance of the Poor in that Alms-houſe: this is a Gift to *charitable uſe*, and all the profit of the Land ſhall be imployed to

that use. See for this *chap. 6. Case 9.* That such a *Decree* made by the Commissioners, was confirmed by the L. Keeper.

So if one devise his Land to some of his Friends, and their Heirs in Trust, to maintain a *Preacher, School-master* & poor people in *Dale*, and appoints what each shall have; all but 35 *l.* But the over-plus shall go to *charitable use*, to increase the number of the Poor. See for this, *chap. 6. Case* 10.

So if one by his Will appoint that his Executors shall devise a way, that a *Preacher* shall be found for ever to preach the Word of God in the Church of *Dale*, 4. times in the year, and to have for his labour 10 *s.* for every Sermon. So to erect a *Free Grammar-School.* See for this *Popham's Rep. 6. Gibbons* Case.

So if by Will devise his Land in *Essex* to the Parson and Church wardens of *S.* in *Thames-street, London*; to the end, that they and 4 honest men of the Parish, should sell the Land, and imploy the money for the Poor, and *charitable uses* in that Parish: this is a good *charitable use* within this Stat. See for this, *chap* 6. *Case* 28.

So if one devise 10 *l.* a year for ever out

out of his Land, to maintain two Schollars in *Oxford* and *Cambridge*. See for this, *chap.6. Case* 29.

So a Deviſe of Land or Money, to the poor people maintained in the *Hoſpitall* of St. *Lawrence* in *Reading*, is good within this Statute, *chap.6. Case* 30.

So a Deviſe of Land, to the uſe of an *Hoſpital*, is a *charitable uſe* within the Statute. See for this, *chap.6. Case* 38.

So if Souldiers and Marriners, having much in Arrear, agree to take half, and to leave the reſt in their Captains hands, to be imployed for relief of maimed Souldiers and Mariners upon the Seas, their Wives and Children; which is ſo done: this will be a *charitable uſe*, under the Order of the Commiſſioners, and Affirmance of the L. Keeper. See for this, *chap.6. Caſe* 13. and *Moors Rep.* Caſe 1152.

So a Deviſe by Will to the Maſters and Fellows of St. *Johns* Colledge in *Cambridge*, for maintenance of the Schollars there, is a good Gift within the Statute, *chap.6. Case* 16.

So a Deviſe by Will to *Jeſus* Colledge in *Oxford*, and their Succeſſors, to find a Fellow there of the Donors Bloud, is good

within the Statute. See for it *chap. 6.*

So where a Feme-Covert, an Adminiſtratrix to her firſt husband, married again, do during her ſecond Coverture, make her Will, and thereby give a part of that Eſtate to *charitable uſes*, and dye, living her husband, if there be Aſſets of the Eſtate to diſcharge it at her death. See for this, *chap. 6. Caſe* 11, *Moors Rep. Caſe* 1111. *Damus Caſe.*

So if one by Will deviſe a houſe he hath to his wife for life, and after her deceaſe to 4. Feoffees, to ſee it repaired, and with the reſt of the Profits, after their diſcretion, to beſtow upon the repair of a High-way in ſuch a place, *Moors Rep. Caſe* 1251. See *chap. 6. Caſe* 41. *Rolls* Caſe.

So if a Debt owing by Judgment, Statute, Bond, or Recognizance, (which is a thing in Action) be given to *charitable uſe*; this is good in this Caſe, and may be ordered by the Commiſſioners, *chap. 6. Caſe* 21, 24.

So a Deviſe of Land to build a School, is a good uſe with in this Statute. See for this, *chap. 6. Caſe* 24.

So money given for the good of the Church of *D.* See it, *chap. 6. Caſe* 26.

So

So if one by Will deviſe his Land to be ſold, and the money to be diſtributed to 20 of the poor of his Kindred; this is a good uſe within this Statute.

All theſe are agreed to be good *charitable uſes* within the Stat. to be ordered by the Commiſſioners of *charitable uſes*, without Relief, as to that point to be expected with the *Lord Chancellour* upon Appeal.

If a Limitation of Lands, Rents, &c. be to keep and find an *Obit*, or *Anniverſary*, in the Pariſh of *E.* for the Souls of ſuch and ſuch, and all Chriſtian Souls, or the like; and that ſo much out of the Land ſhall be ſpent yearly about it; but all the reſt of the Profits ſhall go to the repair of the High-ways, or ſuch like uſes; here, this is a good *charitable uſe* for all the overplus. See *Coo.* 4. *Adams* and *Lamberts* Caſe.

SECT. II.

How the Gift or Limitation of a Charitable Uſe by Deed or Will ſhall be taken.

Gift of the Rent out of Land.

IF one by Will Deviſe the Rents of his Land to a Charitable Uſe, by this the Land it ſelf is Deviſed. So of the Deviſe that is of the Rents and Profits of his Lands. See for this, Chap. 6. Caſe 9.

Charitable uſe within the Equity of the Statute.

If Money be given to maintain a Preaching Miniſter, this albeit it be not named in the Statute, yet it is within the Equity of the Statute; and the Commiſſioners may order the Executors to pay it for Charitable uſe. See for this, Chap. 6. Caſe 35.

Gift of a Rent.

If one Deviſeth the Rent of his Land to a Charitable Uſe; this ſhall be taken largely for a Deviſe of the Rent then reſerved, or afterward to be reſerved upon an improved value. See for this, Chap. 6. Caſe 9, 12.

The

The word [*Given*] in the Statute, extends as well to Gifts after, as to Gifts before the making of this Statute. See for this, Chap. 6. Caſe 2.

[Given] *in the Statute Expouud.*

Where no uſe is of Land mentioned nor directed in the Deed, by which it is given, it ſhall be to the uſe of the Poor, albeit the Feoffees be Gentlemen living out, and no Inhabitants within the Town. See for this, Chap. 6. Caſe 32.

To what uſe a Gift ſhall be.

If a Gift, or a Deviſe by Will be of a Charitable Uſe, to a Corporation in truſt for others; or to others in Truſt for a Corporation, and the name of the Corporation is miſtaken in the one or in the other caſe: yet it ſhall be good as to this purpoſe, and it will be within the Order of theſe Commiſſioners. See for this, Chap. 6. Caſe 16.

Name of a Corporation miſtaken.

Gifts to this uſe good, though not good by Law.

If one Deviſe Land to one for life, the Remainder to the Church of St. *Andrews* in *Holborn*; In this caſe the Parſon of the Church ſhall have this Remainder. 21 *R.* 2. *Deviſe* 17.

Deviſe incertain.

If a Gift be thus; [*For the good of the Church of Dulk.*] this will be good in this caſe of a Charitable Uſe, notwithſtanding the Incertainty. See it, chap. 6.

Gift to a Church.

caſe 26. and ſo by reaſon, will it be in all ſuch like incertain Gifts.

20 l. a year to a preaching Miniſter.

If one Deviſe 20 l. a year to a preaching Miniſter, leaving Land and Aſſetts in Goods; this is good, and the Executor will be forced by the Commiſſioners and Lord Keeper, to buy ſo much Land, and to aſſure it to that Uſe. See this, *chap.* 6. *caſe* 36.

For a Remainder, without a particular Eſtate.

If one ſeized of Copyhold Land in Tail, ſurrender it in Court to the uſe of his Will, and hath a common Recovery in the Mannor, according to cuſtom; but there is Error in the Recovery: and after by Will, he deviſeth it to his Wife for life, the Remainder to a Charitable Uſe; In this Caſe, albeit Recovery and Deviſe be voyd as to the Eſtate for life; but the Deviſe will be good as to the Remainder for the Charitable Uſe. And albeit the Heir avoid the eſtate tail againſt the wife (as he may at Law), yet the Remainder to the Charitable Uſe ſhall ſtand good, and be a Remainder without a particular Eſtate. See for this, *chap.* 6. *caſe* 16.

Gifts good by this Statute, though void in Law.

Deviſe incertain.

If one by Will deviſe Land to be ſold, and the Money to be diſtributed to 20 poor of his Kindred. In this Caſe, and for

for this purpoſe; this will be a good Deviſe, albeit it do not appear that he hath any poor Kindred. See for this, *Chap. 6. caſe* 27.

Deviſe to four men, not a Corporation.

If one have Land in *Eſſex*, and Deviſe it by Will to the Parſon, and the Churchwardens of *L.* in *Thames-Street* in *London*, to the end, that they, and four honeſt men of the Pariſh ſhould ſell the Land, and imploy the Money for the Poor and Charitable Uſes in that Pariſh: In this Caſe, albeit the Parſon and Churchwardens be not a Corporation to take Lands out of *London*, nor to ſell to ſuch Uſes; yet this is to this purpoſe a good Deviſe, and they may ſell the Land. See for this, *chap. 6. caſe* 29.

Co poration.

Deviſe of a Rent by a Rent by a Nuncupative Will.

If one Deviſe by parcel 10 l. a year Rent out of ſuch Land, with 100 Marks in the *Old Jury*, *London*, for maintenance of two Schollars in *Oxford* and *Chambridge*, and bids the Scrivener put it in Writing. This Nuncupative Will is good to this purpoſe by way of limitation or appointment within the Statute, to create a Rent to a Charitable Uſe, albeit a Rent by Law cannot be created without a Deed or Will in Writing. See for this, *chap. 6. caſe* 29.

If

For a Rent deviſed.

If one by Deed grant a Rent-Sec out of his Land to Charitable Uſe, to begin after his death, and give Seiſin of it in his life time; and in the Grant is a *nomine pœnæ* of 50 s. if the Rent be unpaid by the Heir after 14 dayes, this *nomine pœnæ* ſhall not light upon any other but the Heir: but into whoſe ſoever the Land comes, he is to pay all the arrears, for the Land is Chargable with it. And the Seiſin given by the Grantor in his life, before the Rent began, or was in *Eſſe*, ſhall be good, *chap.6. caſe* 15.

Nomine pœnæ.

Deviſe by an Infant, Feme Covert, Lunatick, to this uſe.

If an Infant, Feme-Covert, Lunatick, or other perſon diſabled by Law to make a Will, and limit and appoint Lands to ſuch a Charitable Uſe; this will be voyd, and may not be affirmed; but is to be avoided by the Commiſſioners and Lord Chancellor alſo. See for this, *chap.6. caſe* 37,40. *Hobb.* Rep. 136.

Deviſe to this uſe upon Condition.

If one by his Will deviſe all his Land to an Hoſpital, paying after his death 1000 l. where his wife ſhall appoint, and the Hoſpital doth pay the Money: In this Caſe the Commiſſioners are to Decree the Land to them.

If

If one by Will deviſe his Land to his Wife for life, and after that made *A. B. &c.* (as he called them) Feoffees to beſtow the profits for the repair of Highwayes there, he and his wife dye; In this Caſe, albeit the Deviſe be voyd, yet it is with the Relief of the Statute of 43 *Eliz.* by the words limited and appointed to Charitable Uſes, *chap. 6. caſe* 40. *Hobb.* Rep. 136.

To a Corporation, by a wrong Name.

If Lands be deviſed to a Corporation by a miſtaken Name, as to the Mayor and Chamberlain, for the Mayor and Commonalty of *London*; this is good within the Statute. See for this, *chap. 6. caſe* 38.

To a Corporation.

If one Deviſe to a Corporation, as the principal Fellows and Schollars of *Jeſus* Colledge in *Oxford*, to find Schollar of his Blood from time to time: In this Caſe, albeit the Deviſe be voyd in Law, becauſe it is a Corporation (excepted in the Statute of Wills) yet it is within the Relief of the Stature of Charitable Uſes, by the words limited and appointed. See it in *chap. 6. caſe* 40.

Deviſe void in Law, good to this purpoſe.

Deviſe to a Corporation.

If one give to a Colledge by way of Deviſe in a Will, to a Colledge, to any Charitable

Deviſe of Capite land.

Charitable uſe; this (as to this purpoſe to bring it within this Statute of 3 *Eliz.* 4. is good enough, but not good by the Statute of Wills) to a Corporation. So of a Deviſe of *Capite* Land for the third part. See for this, *chap. 6. caſe* 17. But ſuch a Deviſe by Will made by an Infant, Feme Covert, or Lunatick, is not good, albeit it be to ſuch a Uſe, is void, and not made good by the Statute of *Wills*, 32 & 34 H. 8. And yet if one had deviſed two parts of his Land by Will, according to the Statute, and after Deviſe a 3d part to a Uſe Charitable; It was held, This was not good: But at this day, now that the Tenure is gone, it ſeems to be good. See for this, *chap. 6. caſe* 18. 23.

Deviſe by an Infant, &c. to ſuch a uſe.

Deviſe to a Corporation.

If a Deviſe be to Corporation of Land, albeit in another caſe it be not good; yet in ſuch a Gift to a Charitable Uſe, it is good enough to bring it under the Order of theſe Commiſſioners upon this Statute. See for this *chap 6. caſe* 22.

Deviſe to ſuch as are no Corporation, good to this uſe.

If a Deviſe be to the poor People maintained in the Hoſpital of St. *Lawrence* in *Reading* (where the Mayor and Burgeſſes, capable to take in Mortmain, do govern the Hoſpital). In this Caſe, albeit

albeit the Poor, not being a Corporation, are not capable by that name; yet the Deviſe is good, and the Commiſſioners may order him that hath the Land, to aſſure it to the Mayor and Burgeſſes, for the maintenance of the Hoſpital. See for this, *chap.6. caſe* 30.

If a man Deviſe to a Charitable Uſe within a Corporation; yet it ſeems good, and within this Statute. See for this, *chap. 6. caſe* 31.

If Land be given to the Church-wardens of a Pariſh, to a Charitable Uſe; In this Caſe, albeit the Deviſe be void in Law; yet it is a good limitation and appointment of it, to bring it within this Statute, *chap.6. caſe* 34. See more, *chap. 7. ſect. 4. part* 4. Land given to Church-wardens.

The Power of the Ordinary is the ſame it was before the making of the Act. See the Statute of 43 *Ed.3. chap.4.*

SECT.

SECT. III.

What ſhall be ſaid to be a Miſ-imployment of ſuch a Uſe; or Breach of Truſt therein.

IT ſhall be accounted and called a Miſ-imployment of a Gift or Diſpoſition to Charitable Uſes, in all caſes, where there is found any Breach of Truſt, Falſity, not Imployment, Concealment, Miſgovernment, or Converſion in and about the Lands, Rents, Goods, Money, &c. given to the uſe, againſt the intent and meaning of the Giver or Founder.

As for Example; If one have a Leaſe of Land given to ſuch a uſe, and he doth make waſt and deſtruction upon the Land, by cutting down and ſale of Trees, of Timber, eſpecially if it be where he hath the Land at an undervalue, or the like; this is a Miſ-imployment: In this caſe, the Commiſſioners may *Decree* the Leaſe to be void and ſurrendred, and that the Leſſee ſhall make a Recompence. See for this, Chap. 6. Caſe 6.

To

To make Leases, or to let the Land at undervalues of Fines or Rents, is held to be a mis-imployment questionable, that the Commissioners may redress, by ordering the Tenant of the Land, or the parties trusted with the Use, as they shall see cause, to make it up. And in this case the Trustees are not only to let it at the value it is at the time of the first Settlement, and raising of the Us, but at all times afterward; So that if the Land grow to be worth more by much then it was, and he let it at the old Rate; this is a mis-imployment. See for this, Ch. *6.* Case *6*, 7.

To keep the profits of Land, or Money given to Charitable Use in ones hands, whether it be concealed or not, not to pay it when it is due, or convert it to other use, is a mis-imployment within this Statute. See for this, Chap. *6.* Case *6.*

To convert or change the Imployment to other uses then according to the Intent of the Founder or Giver: As, if the Gift be to find a Preacher in *Dale*, and the Trustees find a Preacher in *Sale*: If it be to find a Preacher, and the Trustees imploy

imploy it to the Poor, or ſome other kind of uſe; Theſe and ſuch like Acts or Neglects of the parties Truſted with the Uſes, will ariſe to a Miſ-imployment under the power and redreſs of the Commiſſioners for Charitable Uſes. *Lanes Rep.* 115.

See more for theſe things in the *Statutes* of 39 *Eliz. Chap.* 6. 43 *Eliz. Chap.* 4. 9. *Cook.* 2. Part, *Inſtitut.* 710, 711.

SECT. IV.

What Remedy is to be had where there is a Miſ-imployment of Land, or Goods, given to Charitable Uſes. And of the Commiſſion of Charitable Uſes, and all the Proceedings therein.

Part 1. IF any Miſ-imployment be of any Land, Moneys, Goods or Chattels given to any ſuch Charitable Uſe as is aforeſaid, upon Complaint thereof, unto the *Lord Chancellor* or *Lord Keeper*, and to the *Chancellor* of the *Dutchy* of *Lancaſter*

Lancaſter reſpectively, may within their ſeveral Juriſdictions grant Commiſſions under their ſeveral Seals in order to relief, and the Regulation of ſuch Miſimployment. And theſe Commiſſions are called *Commiſſions of Charitable Uſes.*

And in the Execution hereof, heed muſt be given to theſe two things: 1. The Commiſſion it ſelf. 2. The Execution of the Commiſſion; that it be made and executed according to the Statute.

For the firſt of theſe, the *Commiſſion* it ſelf, care muſt be had,

1. That there be in the Commiſſion 4. or more Commiſſioners made; And any 4. whatſoever of them may make a Decree, and do any thing in execution of the Commiſſion; for none of them are of the *Quorum.* *As to the Commiſſion, and Commiſſioners.*

2. One of the Commiſſioners named muſt be the Biſhop of the Dioceſs (if any Biſhop be at the time of the ſealing of the Commiſſion, or the Commiſſion is not good. And the reſt may be of the Chancellor of the Dioceſs, and others of good and ſound behaviour. But if the Biſhop be named in the Commiſſion, the execution may be any 4. of the reſt without *How it muſt be.*

out his preſence, or the preſence of the Chancellor. But if the See be void at the time of ſealing the Commiſſion, then the Commiſſion will be good, albeit neither Biſhop, nor Chancellor be named in the Commiſſion. And the Metropolitan in ſuch a caſe, where the See is void, need not be named. See for this, Ch.6. Caſe 2. And if the Biſhop be named a Commiſſioner, and dye before the Certificate returned; This ſhall not avoid the Commiſſion: for the reſt of the Commiſſioners may proceed notwithſtanding.

Part 2. 3. The Commiſſioners muſt be ſuch as have not any part of the Lands, or other things in queſtion, for they are not to be named; or if they be, may not ſerve as Commiſſioners.

4. That the Commiſſion do mention a certain time within which the Commiſſioners are to make their Order, Decree, and Certificate.

5. That the Commiſſioners do call the parties intereſſed in the Lands, Goods, Money, &c. before them. See the Warrant for it, in Chap. 3. And yet if it be done without this, the Decree may be good. See Chap.6. Caſe 3.

6. It

6. It will be their wiſdom alſo to call before them ſome of the Officers, as Conſtables, and Church-wardens of the place concerned in the uſe. See a Warrant for it in Chap. 3.

7. The Commiſſioners are 4. of them to ſend their Warrant to the Sheriff to ſummon a Jury to be before them when and where they appoint. See the Warrant in Chap. 3.

And at the time and place they are to call for the Retorn of it, to ſwear the Jury, and prepare the *Inquiſition*. See Chap. 3. *Part 3.*

Then at the time of their ſitting to execute the Commiſſion, theſe things are to be known:

1. That the Parties intereſſed in the thing in queſtion, may have and take their lawful Challenges againſt the Jurors or any of them. *As to the Jury and their Inquiſition.*

2. That none that pretend Title to any of the Lands or Things in queſtion, is to be admitted a Juror, but may be challenged. And if choſen, they may not ſerve.

3. The Jury is to find, and to make retorn of the Caſe, as it is to the Commiſ-

ſioners by way of Inquiſition in Writing in Parchment.

And in their Enquiry and Preſentment, they are to heed theſe 3. Rules of Direction:

Of what Lands, Goods, Money, &c. th y may Enquire. Part 4.

1. They are not to meddle with the Lands, Goods, or Money, of or belonging or appertaining to Colledges, Halls, or Houſes of Learning within either of the Univerſities, the Colledg of *Weſtminſter*, the Colledg of *Eaton*, the Colledg of *Wincheſter*, or to any Cathedral or Collegiate Church, nor to the Lands, Money, &c. of or belonging to any City or Town Corporate, where there is a ſpecial Governour or Governours of ſuch Lands, &c. the Lands of or belonging to any Colledg, Hoſpital or Free-School, which have ſpecial Viſitors or Governours or Overſeers appointed to them by their Founders; nor the Land, &c. of Purchaſors for valuable conſideration of money or Land, without fraud or covin, that have no notice of the ſame Charitable Uſe: For the Commiſſioners themſelves have not to do herewith. And yet the Commiſſioners albeit they may not make any *Decree* againſt ſuch Purchaſors; yet may

may they make a *Decree* for recompence to be made by any perſon or perſons who being put in truſt, or having notice of ſuch Charitable Uſes ſhall break the Truſt, or defraud the ſame uſes by any Conveyance, Gift, Grant, Leaſe, Releaſe, or Converſion, and againſt his and their Heirs, Executors, and Adminiſtrators, having Aſſetts in Law or in Equity, as Truſts, Confidences, and the like. Nor the Purchaſors of Lands, &c. aſſured, conveyed, and come to Queen *Elizabeth*, *H.* 8. *Edw.* 6. or Queen *Mary*, by Act of Parliament, Surrender, Exchange, Relinquiſhment, Eſcheat, Attornment, Conveyance, or otherwiſe. But if any ſuch Lands, &c. have ſince the beginning of Queen *Elizabeths* Raign been given &c. to any of the Charitable Uſes before mentioned. To all theſe this Act doth not extend. But ſee afterwards in Sect. 5, 6. how theſe things are to be taken.

Power of the Commiſſioners to order a Recompence and amends.

2. They are not to enquire of Miſimployment of Uſes in another County, then that wherein the Lands given to ſuch uſes do lye. See for this, Chap. 6. Caſe 34.

The Commiſſioners and Jury in the

Execution of their Commission are to enquire of the Gift, Limitation, or Purpose of the Giver, or Founder of the Charitable Use where any Land, Rent, Goods, or Money are given to such use: And of the Trust what it is.

Part 5. And then they are to enquire what breach of Trust, or fraud hath been, by non-imployment, mis-imployment, concealment, mis-converting, or mis-government therein. And how many wayes this may be, is to be seen before in Sect. 3.

The Proceed of the Commissioners, and their power.

As to the proceeding of the Commissioners themselves, and their power in the execution of the Commission, these things are to be known:

Part 6. 1. That it is not material, That the Commissioners which were present at the time the Evidence was given, and of the taking of the *Inquisition*, be present at the making of the Decree; for if any or all of them be absent at the making of the Decree, which were present at the time of the taking of the *Inquisition* and *Evidence*, the *Decree* is good, if it be made by 4. or more of the Commissioners.

And

And if it appear by the Return, that the names of 4. Commiſſioners were affixed to the *Inquiſition*, and 4. other Commiſſioners to the *Decree*, all is good. See for this, Chap. 6. Caſe 6.

Power of Jury to enquire of a Lands in another County.

2. That if Lands in *London* be given to maintain a Charitable Uſe in R. in the County of *Warwick*; And a Commiſſion be taken out in the County of *Warwick* to enquire of this Gift: In this caſe theſe Commiſſioners of *Warwick*-County may not Decree it. For the Inquiſition and Decree muſt be by Jurors and Commiſſioners of the County where the Lands given to ſuch Uſes do lye. See for this, Chap. 6. Caſe 24. See in *Part* 8. of this Section.

Decree of Lands in another County.

3. The Commiſſioners are not to meddle with or order any thing concerning the Colledges of Univerſities, &c. others. See before, *Part* 4. Nor ſuch places as have ſpeciall Viſitors, &c. See it there.

4. Nor are they to meddle with Purchaſors, &c. for valuable conſideration of Money or Land without *Fraud* or *Covin*, that have not notice of the *Charitable Uſe*.

But the *Commiſſioners* are by the words of the Statute of 39 *Eliz.* & 43 *Eliz.* after

Enquiry made, and upon examination and hearing of the matter, to ſet down ſuch *Order*, *Judgment*, and *Decree*, as the ſame *Charitable Uſes* may be truly obſerved in full, ample, and moſt liberal ſort, according to the true intent and meaning of the Founder sand Donors thereof; which *Order*, *Judgment*, and *Decree* not being contrary or repugnant to the *Orders*, *Statutes*, or *Decrees* of the *Donors* or *Founders*, are (by the words of the Statute of 39 *Eliz.* & 43 *Eliz.* to ſtand firm and good, and be executed according to the tenor thereof, until the ſame ſh ll be undone or altered by the *Lord Chancellor* of *England*, or *Lord Keeper* of the Great Seal of *England*, or the *Chancellor* of the County Palatine of *Lancaſter* reſpectively within their ſeveral Juriſdictions, upon the complaint of the party grieved to them.

And therefore for the further help and direction of Commiſſioners in this caſe, of the making of their *Decree*, they are to ſteer themſelves and their proceed therein, by theſe following Rules and Caſes:

1. That where Mony is kept back, and not paid, or paid where it ſhould not have been paid; the Commiſſioners may Order the payment of it, and the arrear-

ages

ages to the Use limited by the Donor. And to be paid to the publick Officers of the Parish, if it be in Parish payment. And to continue the payment forwards, as they judge it most secure.

If given to Friends in Trust to pay so much yearly to such a Use, and they keep it in their own Hands, they may order the payment of it.

Power of Commissioners to vacat a Lease, and order Surrender of it.

2. That if a Lease or Conveyance be made by Parties trusted with a Charitable Use, to defraud and defeat the Use, the Commissioners may Decree the same to be void; and thereupon the same is void in Interest and Estate. And if after upon Appeal, the Supreme Lord do annul the Decree of the Commissioners, and make good the Lease; it is then received, and made good again in Interest and Estate. And if such a Lease or Conveyance be assigned over to any, the Commissioners may Decree the Assignment to be void, albeit the first Conveyance were made fraudulently, and in deceipt of the Charitable Use. See *Chap 6. case 2.*

To make amends to hurt done to the Land given to such uses.

If Houses given to Charitable Uses, be suffered to be ruinous, and out of repair, by negligence; the Commissioners may Decree,

Decree, That thoſe that receive the Rents and Profits of them, ſhall repair them, albeit they have otherwiſe laid out the Rents in performance of the Charitable Uſe, and may order the Houſes to be ever after kept in good repair, as oft as need requires. And if they which ought to repair the Houſes be dead before the Commiſſioners Decree, they may order the Heirs, Executors, or Adminiſtrators, having Aſſetts in Law or Equity, to repair the ſame. See before, *chap. 6. caſe 2.*

Part 8. Power of the Commiſſioners.

To make a Corporation.

3. That the Commiſſioners may not by their Decree make a Corporation, not before incorporated, and enable them to take to Charitable Uſes, as a Corporation; as Church-wardens, which are a Corporation in Law, but to ſpecial purpoſes. See for this, *chap. 6. caſe 2.*

But they may Decree Lands held in *Capite*, or in Socage; to a Corporation already incorporate, to be Truſtees to perform a Charitable Uſe: And it ſhall be no Mortmain.

Power of Commiſſioners.

4. That they may Decree Lands given to Charitable Uſes, to ſundry perſons and their Heirs, to the ſaid Uſes, and enable them

them to demiſe the ſaid Lands for the beſt profit of the ſaid Charitable Uſe; and that when ſuch a number of them ſhall dye; the Survivors ſhall make a Conveyance to ſettle the ſame Lands in themſelves that ſurvive, and others to make up and continue the number by them appointed. See for this, *chap. 6. caſe 2, 5.*

To order the Settlement of the Land charged.

5. That where Lands which lye in the Body of a County be given to a Corporation, to maintain Charitable Uſes; the Commiſſioners of the County may make Orders to reform the breaches of Truſts, and miſimployment of ſuch Lands by the Corporation. See for this, *chap. 6. caſe 2.* See before, *chap. 7. ſect. 4. part 6.*

Power of Commiſſioners to order within another County.

6. That where a Rent is granted out of Lands in ſeveral Counties, for maintenance of a Charitable Uſe in one County; the Commiſſioners in that County where the Charitable Uſe is to be performed, may make a Decree, to charge the Lands in other Counties to pay an equal Contribution of Charge in payment of the ſaid Rent. And there needs not Inquiſitions in the ſeveral Counties, for that the Rent is an entire Grant by the Deed or

Power of Commiſſioners to order within another County.

Iuquiſition in divers Counties.

or Will. See for this, *chap. 6. caſe 3. Eaſt Greenſted's* Caſe.

Rent extinct, revive by a Decree.

7. That if the Deviſees of a Rent-Charge, or the Grantees thereof to a Charitable Uſe, do purchaſe all, or part of the Lands out of which the Rent is iſſuing: In this caſe, alb it in extremity of Law the Rent-Charge be extinguiſh'd; yet if the Commiſſioners Decree the Rent to be revived, and ſettle it upon others to maintain the Charitable Uſe, the Rent is revived by the Decree. See for this, *chap 6. caſe 3. Eaſt Greenſteds* Caſe 8. The Caſe of the Inhabitants of *Woodford.*

Rent continue.

8. That if a Rent-Charge be granted out of Land to a Charitable Uſe, and the Land is afterward ſold for a valuable conſideration of Money or Land to one that had no notice of the Rent; yet the Rent remaineth. For that the purchaſe was of another thing that was not given to the Charitable Uſe. See for this, *chap. 6. caſe 3. Eaſt Greenſted's* Caſe 8. The Caſe of the Inhabitants of *Woodford.*

9. That

9. That albeit the Parties intereſſed are to have notice from the Commiſſioners of their time and place of ſiting; yet if they make their Decree without this, it is good. And if upon their Appeal, they make this an Exception, that they had not Notice; this ſhall not avoid the Decree, unleſs they ſhew withall in their Exception, that thereby they loſt the benefit of ſuch an Exception, or of ſuch a Challenge of a Juror, ſhewing the cauſe in certain. And then if the Lord Keeper ſhall adjudge the cauſe ſhewen to be a ſufficient cauſe of Exception or Challenge; the Decree of the Commiſſioners may be adnulled and reverſed without further examination. See for this, *Chap.* 2. *caſe* 3. *East Greenſted's* Caſe, and Caſe 4. of the Poor of *Walthamſtow.*

Notice to the perſons intereſſed, how to be given.

10. That the Notice to be given to a Purchaſor of Lands given to Charitable Uſes; is to be certain, and a general Notice is not ſufficient. See for this, *chap.* 6. *caſe* 3. *East Greenſted's* Caſe.

Notice of the uſe to a Purchaſor, what. Part 9.

11. That if a Purchaſor of Land given to Charitable Uſes, for conſideration of Money, hath legal Notice of the Uſe, and afterwards ſelleth the Land to another

Notice of the uſe to a Purchaſor.

ther for Money, who hath no notice of the Uſe: This ſecond Purchaſor ſhall hold the Land chargable with the Charitable Uſe. But if the firſt Purchaſor had no notice of the Uſe, then is the Land diſcharged of the Charitable Uſe. And if he afterwards ſell it to another for Money, that hath notice of the Uſe; yet he ſhall not hold it ſubject to the Charitable Uſe. See for this, *chap. 6. caſe* 3. *Eaſt Greenſted's* Caſe, and *caſe* 33.

How a Rent is to be charged by the Decree.

12. That if a Rent-Charge be granted to a Charitable Uſe out of Lands in ſeveral Counties: In this caſe the Commiſſioners are to Charge this Rent by their Decree upon all the Lands in every County, according to an equal diſtribution, having regard to the yearly value of all the Lands chargable with the Rent, and may not by their Decree Charge one or two Mannors with all the Rent, and diſcharge the reſidue in other Counties or Places, for then their Decree will be contrary to the Will of the Founders or Donors. See for this, *Chap. 6. caſe* 3. *Eaſt Greenſted's* Caſe.

Notice to the perſons intereſſed, how to be given.

13. That if one be authorized by a Party, ſubject to the Decree of the Commiſſioners

miſſioners for a Charitable Uſe, as a Counſellor, Sollicitor, or Attorney, to Sollicit and defend his Suits, and notice is given to him by the Commiſſioners of the time and place of Execution of the Commiſſion againſt the perſon ſo entertaining him, adviſing him, to acquaint the Party intereſſed therewith, and the notice is in time, that he may acquaint him, and no man cometh to make defence or challenge, and the Commiſſioners make a Deeree, this is good, and the Notice was ſufficient. And in the Caſe of *S.* it was proved, he was an aged man, not able to follow his own buſineſs, being in a remote County; but had a Son a Counſellor at Law, who in other things attended his Fathers buſineſs; and the Commiſſioners gave him timely notice. And it was taken as a neglect of purpoſe to avoid the Commiſſion: Alſo it was proved, That the Father had perſonal notice of the time and place appointed by the Commiſſioners, and the Son came to attend it, but took no exception to the Jurors: And the Lord Keeper ſaid, that the Notice was ſufficient, although he had no Notice of the Inquiry.

14. That

Notice to Purchaſors.

14. That if Land given to charitable uſe, be ſold for money, to one that hath notice of the uſe; this notice ſhall make the Land chargeable with the uſe in the hands of all other Purchaſors, although no notice be given thereof to them. But if the firſt Purchaſor have no notice of the uſe, then is the Land diſcharged of the uſe, and ſo ſhall be in the hands of all the ſucceeding Purchaſors. And no notice given to them afterwards will help it. See the Statute of 43 *Eliz.* Chap. 4. and Chap. 6. *Caſe* 6.

Rent continue.

15. If one have a Rent granted to him out of Land, to a charitable uſe, and he afterwards, having no notice of the charitable uſe, purchaſe the Land; By this it is ſaid, the Rent is not extinct, for that the purchaſe is of another thing then was given to the charitable uſes. See for this, *Chap* 6. *Caſe*. 8. 15.

Notice to a Purchaſor.

Notice to a Purchaſor.

16. Notice to a Purchaſer of a Charge upon the Land, to a charitable uſe, before a Conveyance is perfected, as after a Surrender before Admittance of Copyhold Land, or between the Agreement and Sealing of the Writings, or before Attornment, Livery of Seiſin, Inrollment, and

and the like, where notice is requisite, is timely enough. See for this, *Chap. 6. Case* 8.

17. If one give Lands or Goods; And by his will appoints, that it shall be sold to maintain a charitable use, and doth not appoint by whom the sale shall be made; In this Case, the Commissioners may by their Decree, appoint who shall sell them, and order the sale to be good, and that the money thereof made, shall be imployed to the charitable use of the Giver, according to his will. And if exception be to it, the Lord Keeper will confirm it. See for this, *Chap. 6. Case* 22.

Part 10. *Power of Commissioners to appoint who shall sell Land.*

18. That if one devise money to a charitable use, for the relief of the poor, and makes two Executors, and dyes, and they prove the Will, and joyntly intermeddle with the Receipt of the money, and one of them doth trust the other with the money, given to perform the charitable use, and to pay it accordingly, and he wasts it, and dies insolvent, the Surviving Executor shall be charged to pay the money for the charitable use, if the Testator hath left Assets to pay it, for that they did joyntly intermeddle. But if the

Where the Commissioners may charge one for another.

Executors how chargeable.

Executor that dyed; did only prove the Will, in the name of both Executors, and the ſurviving Executor never medled in the execution of the Will, but left all to the other, and he waſt the Eſtate, and dye inſolvent, the ſurviving Executor ſhall not be charged with the charitable uſe, out of his own Eſtate. See for this, *Chap. 6. Caſe* 4.

Executors how chargeable.

19. That if money be given to a charitable uſe by Will, and the Executors detain it in their hands many years, and not imploy it according to the Will, having Aſſets; the Commiſſioners may decree the money, with damages, for detaining of it, to be imployed in the charitable uſe, according to their diſcretion, not exceeding 8 *l. per Cent*, for a year, for the damages. See for this, *Chap. 6. Caſe* 4.

Commiſſioners give uſe for damnage.

For the improvement of the Land. What the Commiſſioners may do therein.

20. If Truſtees under-let the Land, and make a Leaſe good by Law, the Commiſſioners may make voyd the Leaſe order the ſurrender of it, and order the Settlement of the Land upon other Truſtees. See for this, *Chap. 6. Caſe* 5. 6, 7, 9.

21. If

21. If a Leſſee that hath a Leaſe at an under-value, make Waſt by cutting, and ſale of Timber, the Commiſſioners may order them to give a Recompence for it. See for this, *Chap. 6. Caſe* 4. But if he beſtow the Timber in repair of the Houſes, *Contra.*

To give recompence for waſt on the Land.

22. The Commiſſioners may by their Decree, enable perſons as Truſtees, to have Intereſt in the Lands given to charitable uſes, and to demiſe the ſame, according to the improved value. See for this, *Chap. 6. Caſe* 5. 6. 9.

To ſettle the Lands given to the charitable uſe.

To order Truſtees to make Leaſes

23. That if Lands of the value of 3 *l. per annum*, be given to maintain a Schoolmaſter, and in the Deed it it expreſſed, that the ſaid 3 *l.* only ſhall be imployed to maintain that uſe, and no other uſe is expreſſed in the Deed, and afterwards the Land increaſeth to a greater value; In this caſe, all the increaſed Rent ſhall be imployed for maintenance of that charitable uſe. See for this, *Chap. 6. Caſe* 6, 7. And if ſuch Land ſo given, increaſe to a better value, if the increaſed value be not alſo paid to the charitable uſe; this is a breach of Truſt, which the Commiſſioners may reform, if no other uſe of Imployment of

To order the Increaſe to to the ſame charitable uſes.

the Revenew, be expreſſed in the Donors Deed. See for this, *Chap.* 6. Caſe 6. 7, 9, 10. *Coo.* 3. 130.

Decree a Leaſe void to be ſurrendred.

24. If one ſet up an Almſ-houſe for 8. poor men, having Land worth 40 *l.* a year, let for years at 20 *l.* a year, and by his will deviſe the Rents of that Land for the maintenance of the poor in the houſe, and his Heir pays the 10 *l.* and at the end of the Term lets the Land for 40 *l.* a year; the Commiſſioners may decree the whole, and what above the 10 *l.* a year, he received after the Leaſe ended. They may alſo decree the new Leaſe void, and to be ſurrendred. See the Caſe, Chap. 6. Caſe 9. 10.

To give damages, Coſts, or Intereſt.

If one give his Land then worth 10 *l.* a year, to maintain a Preacher, Schoolmaſter, and poor people in *Dale*, and the Land after comes to be worth 100 *l.* a year, it muſt be all imployed to increaſe the ſeveral Stipends, and none of it may be converted to private uſe: And ſo the Commiſſioners may order it. And ſo the Lord Keeper will affirm it. See for this, Chap. 6. Caſe 10. *Coo.* 8. 130.

25. The Commiſſioners may give Coſts to the party, who doth proſecute a Commiſſion

miſſion to reform a breach of Truſt in a charitable uſe, and the Lord Keeper may increaſe theſe Coſts, if the party grieved complain without cauſe. See for this, chap. 6. Caſe 5. If money be given to a charitable uſe, and be long detained as concealed, in the Executors, or in other mens hands; the Commiſſioners may decree the money with Intereſt for the time. See for this, Chap. 6. Caſe 19.

To order Truſtees and Viſitors, or to change them.

26. If Land be given to a Corporation, or other particular perſons, to perform a charitable uſe, and the Donor appoint them viſitors alſo of the uſe, according to his intent; In this caſe, if the viſitors do break the Truſt, either by detaining part of the Revenue, miſ-imploying, or any other wayes defrauding the charitable uſe; this may be reſtored by the Decree of the Commiſſioners, notwithſtanding the Clauſe before mentioned in *Sect.* Part 12. out of 43 *Eliz.* which diſables Commiſſioners to meddle with Lands given to charitable uſes, where ſpecial Viſitors are appointed. For the intent of the Statute, is onely to diſable Commiſſioners to meddle with ſuch a Caſe, where the Land is given to perſons

in Truſt, to perform a charitable uſe, and the Donor appoint ſpecial viſitors, to ſee the Truſtees to perform the uſe according to his Intent, If in this Caſe, the Truſtees defraud the Truſt, the Commiſſioners cannot meddle, but the viſitors are to perform it. But where the Viſitors are Truſtees alſo, there the Commiſſioners may by their Decree, reform the abuſe of the Charitable uſe. See for this, Chap.6. Caſe 6.7.

Viſitors.

What perſons the Commiſſioners are not to meddle with.

27. If Land be given to a Corporation of 20 *l. per Annum*, to maintain a Schoolmaſter, and the Donor appoint them viſitors of the School-maſter and Scholars, according to his Orders, the Land came to 100 *l.* a year, and they give 20 *l.* a year onely to the Schoolmaſter: upon this the Commiſſion iſſued out, and the Corporation upon Summons refuſed to appear, ſuppoſing themſelves exempt by the Statute. This being certified, and moved to the Lord Keeper, he declared his Opinion, that the Commiſſioners might proceed in their Commiſſion, and that the Viſitors being Truſtees, and parties breaking their Truſt, are not within the Proviſoe of the Statute. See for this, Chap.6. Caſe 7.

28. That

28. That where the Heir, or others, charged to pay a charitable uſe, do break their Truſt; the Commiſſioners may transfer the Truſt to others, as to the Church-wardens, or others of the Pariſh, where the charitable uſe is to be diſtributed. See for this, Chap. 6. Caſe 15.

To order the Settlement of the Land given to uſe.

29. That where the King erects a Free-School, and gives Land to it, and doth appoint 4. Knights, and the Heirs males of each of their Bodies, to be Governours of the Free-School and Lands, and that none but Knights ſhould be Governours thereof, and they do break the Truſt, by making Leaſes at low Fines, and ſmall Rents, *&c.* In this Caſe, the Commiſſioners, upon this Statute, may not decree the Government and ordering thereof to others. For if they do ſo, the Lord Keeper will reverſe it, by reaſon of the Proviſoe in the Statute. But he may order a Bill to be exhibited againſt the Viſitors and Governours, and upon proof of their breach of Truſt, take courſe for Relief of the charitible uſe. See for this, Chap. 6. Caſe 39.

To appoint other Truſtees, and remove the firſt.

For a Rent. To revive a Rent extinct. Part 13.

30. If one give a Rent out of Land, to a charitable uſe, and one of them to whom the Rent is paid, doth purchaſe the Land, ſo that it is extinct; yet by the Commiſſioners Decree, it will be revived. See for this, chap. 6. caſe 3. 8.

For a Rent given to a charitable uſe.

31. If a Rent be granted out of Land to a charitable uſe; this it ſeems is a charge, that ſhall go with the Land, in whoſe hands ſoever it comes, albeit it be not ſo by the ſtrict Rules of Law, and a Diſtreſs may be taken for it, upon the terre-tenant, for all Arrears, in whoſe time ſoever it was, And the party muſt have his remedy againſt them that had the Land, for the Arrears in their time, in *Chancery.* See for this, *Chap. 6. Caſe* 3. 8.

For a Rent.

32. That where a Rent-Seck is granted out of Land by Deed, to ſuch a uſe, to begin after the Grantors death, and he gives Seiſin in his life-time of the Rent, & there is a *Nomine Pœnæ* upon the Heir for the payment of it, and the Rent is Arrear: In this caſe the Commiſſioners may order a Purchaſor that hath notice of the uſe, to pay all the Arrears, both before, and in his time, and the *Nomine*

Againſt Purchaſors.

Notice to a Purchaſor.

mine Pœna, for the time the Purchaſor hath had it. See for this, *chap. 6. caſe* 15.

Againſt a Purchaſor.

33. That where Land or Rent is given to a charitable uſe, and miſ-imployed, a Purchaſor which hath before his Purchaſe notice of the Gift, is not further to be charged, then for his own time, But where the Rent is concealed, a Purchaſor ſhall anſwer for all the time of the concealment; for the Land is a Debtor, *Et tranſit cum onere.* See for this, *chap. 6. caſe* 15.

Notice.

34. That where a Rent is granted out of Land, to a charitable uſe, and one buyes the Land for a valuable conſideration of money, having no notice of the charitable uſe and Rent, yet the Rent remains; for it is collateral to the Land, and another thing, and the notice required by the Statute, is to be given, as well of the Land, as of the charitable uſe. See for this, *chap. 6. caſe* 8. 15. 33.

What notice muſt be given to a Purchaſor.

35. Where Lands are given to a charitable uſe. If a Purchaſor buy theſe Lands, not having notice of the charitable uſe, it ſhall not bind him. But if a Rent be given out of Land to a charitable

What Notice muſt be given to a Purchaſor.

ble uſe, and a Purchaſor purchaſeth the Land for money, not having notice of the charitable uſe, yet he ſhall pay the Rent, for he doth not purchaſe it, but the Land out of which the Rent doth iſſue. But he ſhall pay no more Arrearages of Rent, then what hath incurred in his time. But every occupier and owner, muſt anſwer the Arrearages of Rent for his own time. See for this, *Chap. 6. Caſe* 33.

To make a Decree upon Land in another County.

36. That Commiſſioners in one County, to a place in which a charitable uſe doth belong from Land lying in another County, cannot make a Decree to conclude parties: For the Decree muſt be by the Commiſſioners of the County, where the Lands given to ſuch uſes do lie. See for this, *Chap. 6. Caſe* 24.

To make of a Rent-ſeck a Rent-Charge.

37. That the Commiſſioners may not by their Decree, make a Rent (that is but a Rent-Seck) granted to a charitable uſe, a Rent-charge by adding a clauſe of diſtreſs to it; for this alters the Rent in the Creation, and is againſt the mind of the Donor. See for this, *Chap. 6. Caſe* 15.

37. As

38. As to this part of the proceeding in the Execution of this Commiſſion, theſe things are to be known:

Touching the Certificate of the Commiſſioners.

1. That their Order and Decree ſo made by the ſaid Commiſſioners as aforeſaid, they are to certifie the ſame into the *Chancery*. But herein theſe things are to be obſerved:

1. They are to certifie the ſame into the ſame Court of the *Chancery* of *England*, or *Chancery* of the County Palatine of *Lancaſter*, whence the Commiſſion comes.

2. It ought to be certified in Parchment, not in Paper; and the ſame under the hands and ſeals of the Commiſſioners.

3. This muſt be done within the time limited by the Commiſſion. See for this, 43 *Eliz. Chap.* 4. *Cook* 2. Part, *Inſtitut.* 10, 11.

SECT.

SECT. V.

The Remedy for the party grieved by the Order and Judgment of the Commiſſioners.

Part 14. IF any be grieved with the Decree or Judgment of ſuch Commiſſioners for Charitable Uſes ſo certified as before, he is to have his remedy in the Court into which it is ſent and certified by way of Appeal, in this Order: 1. He is to make his complaint to the L. Chancellor, or L. Keeper, or the Chancellor of the *Dutchy*, within whoſe Juriſdiction it is for his redreſſe; And this he is to do by Bill. And thereupon they are alſo to put into the Court their Exceptions in Writing againſt the Commiſſione s Judgment and Order. And on the other ſide, againſt it they are to put in their Anſwers to the Exceptions. And thereupon the Court proceed to Examination, and to their final Decree upon it, and order it according

cording to their diſcretion. See for this, 43 *Eliz.* Chap. 4. *Cook* 2. Part, *Inſtit.* 710, 711.

SECT. VI.

Touching the Proceed of the Court into which the Order is ſent and Certified; And the power thereof.

AND as touching the Proceed of the Lord Chancellor, or Lord Keeper, or the Chancellor of the *Dutchy*, into whoſe Court the Certificate of ſuch Order made by the Commiſſioners ſhall be ſent and certified, this is to be known:

1. That they may and ought each of them thereupon within their reſpective Juriſdictions, to take ſuch order for the due execution of all or any of the ſaid Judgments, Decrees, and Orders ſo certified, as to either of them ſhall ſeem meet and convenient, according to Equity and Conſcience, and the true intent and meaning of the Donors and Founders.

2. That in caſe of Complaint againſt the *Decree* or *Judgment* of the Commiſſioners, they do and muſt proceed to the Examina-

Examination and Determination of the Cauſe.

3. That they may upon the hearing of the matter, if they ſee cauſe, adnull the whole *Judgment*: But this is rarely done, *Diminiſh* (in part), or *Enlarge*; that is, Confirm the former Order, and Enlarge the ſame by Addition of ſomething to it, as ſhall be thought to ſtand with Equity and good Conſcience.

4. That they may Award good Coſts of Suit by their Diſcretion, againſt ſuch as ſhall complain againſt the Commiſſioners Order without good cauſe. But if the Order or Judgment of the Commiſſioners be adnulled, diminiſhed, or enlarged, no Coſts may be given to the party complaining. And if the Complaint be for Coſts given by the Commiſſioners for breach of Truſt, and the Lord Keeper find the Complaint to be without cauſe, he may increaſe the Coſts. See for this, in *Chap. 6. Caſe* 5.

5. That if upon an Appeal, the Lord Keeper alter, or confirm a *Decree* made about Charitable Uſes, by the Commiſſioners, he muſt do it; he is to do it with this Limitation, ſo far as may ſtand with Equity

Equity and good Conscience, according to the true intent of the Donor and Founder thereof.

6. But if upon an Appeal in *Chancery* or *Dutchy*, the Decree and Orders of the Commissioners be confirmed, the party grieved can have no remedy but in Parliament. For no Bill of Review doth lye after a Decree is confirmed, upon a Bill of Review, See *Chap. 6. Case 1. Windsor* and *Hilton*. And yet it is said, It is in the Lord Keepers Power to make a *Decree* good where it is defective. See for this, *Chap. 6. Case 20.*

No Remedy against the final Decree of the Chancellors.

See for all these things, 39 *Eliz. Ch. 6.* 43 *Eliz. Chap. 4. 9. Cook 2. Part, Institut.* 710, 711.

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The proceeding of the Court upon the Certificate. And the Power of the Lord Chancellor, &c. herein, Chap. 7. Sect. 6. Chap. 6. Caſe 1.

The End of the *Table*.

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